

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

6 IN RE: NATIONAL : HON. DAN A.
PRESCRIPTION OPIATE : POLSTER
LITIGATION :
7 :
APPLIES TO ALL CASES : NO.
8 : 1:17-MD-2804
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- HIGHLY CONFIDENTIAL -

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

January 4, 2019

Videotaped deposition of
MATTHEW DAY, taken pursuant to notice,
was held at the offices of Golkow
Litigation Services, 1650 Market Street,
Philadelphia, Pennsylvania, beginning at
9:35 a.m., on the above date, before
Michelle L. Gray, a Registered
Professional Reporter, Certified
Shorthand Reporter, Certified Realtime
Reporter, and Notary Public.

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NO. DESCRIPTION

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Spokane-15 US DEA Letter, 9/29/08
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5 Direction to Witness Not to Answer

6 PAGE LINE

None.

7

8 Request for Production of Documents

9 PAGE LINE

None.

10

11 Stipulations

12 PAGE LINE

None.

13

Questions Marked

14

PAGE LINE

15 None.

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5 Today's date is January 4th,
6 2019, and the time is 9:35 a.m.

7 This video deposition is
8 being held in Philadelphia,
9 Pennsylvania, in the matter of In
10 Re National Prescription Opiate
11 Litigation, MDL Number 2804.

¹² The deponent is Matthew Day.

15 The court reporter is
16 Michelle Gray and will now swear
17 in the witness.

18 - - -

22 - - -

23 EXAMINATI

1 BY MR. MADDEN:

2 Q. Please state your name, sir.

3 A. Matthew Maxwell Day.

4 Q. Mr. Day, I'm Brian Madden.

5 I represent the plaintiffs in this
6 litigation. Can you tell us what city
7 you live in?

8 A. West Chester, Pennsylvania.

9 Q. Have you ever given a
10 deposition before today?

11 A. I have not.

12 Q. All right. If I ask you a
13 question today that you do not
14 understand, will you tell me so?

15 A. Yes.

16 Q. And will you agree to give
17 me a verbal answer as opposed to a shake
18 of the head or an mm-hmm or unh-unh?

19 A. Yes, I will.

20 Q. All right. Thank you.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-1.)

24

1 BY MR. MADDEN:

2 Q. We noticed your deposition
3 for today, January 4, at this location.
4 Have you seen this notice prior to today?

5 A. I have not.

6 Q. All right. Do you -- do you
7 understand that you are here pursuant to
8 a deposition notice?

9 A. I do.

10 Q. Are you represented by
11 counsel today?

12 A. Yes.

13 Q. Okay. And what law firm is
14 representing you, if you know?

15 A. Morgan Lewis.

16 Q. What did you do to prepare
17 for giving your deposition today?

18 A. I had met with Morgan Lewis
19 on December 18th and yesterday.

20 Q. How much time did you spend
21 with attorneys from Morgan Lewis to
22 prepare for your deposition?

23 A. On December 18th we spent
24 about three to four hours together and

1 yesterday about four hours.

2 Q. So about eight -- seven to
3 eight hours total?

4 A. Correct.

5 Q. Did you review any
6 deposition testimony to get ready for
7 today?

8 A. Not testimony.

9 Q. All right.

10 A. No.

11 Q. Did you review any documents
12 to prepare for today?

13 A. Yes.

14 Q. Do you recall what documents
15 you reviewed?

16 A. I don't recall specific
17 documents.

18 Q. Do you recall categories of
19 documents? Were they e-mails for
20 example?

21 A. Yes.

22 Q. Okay. Anything besides
23 e-mails that you reviewed to prepare for
24 today?

1 A. Primarily e-mails and
2 resources.

3 Q. What do you mean by
4 resources?

5 A. Like a -- like a brochure.

6 Q. Okay. What about
7 PowerPoints?

8 A. Yes. PowerPoints.

9 Q. What type of brochures?

10 A. Marketing brochures.

11 Q. Marketing plans?

12 A. No marketing plans.

13 Q. Were the brochures that you
14 reviewed marketing brochures that you had
15 prepared?

16 A. Yes.

17 Q. Okay. And were the
18 PowerPoints, PowerPoints that you had
19 prepared?

20 A. Yes.

21 Q. In the context of your work
22 for Cephalon or Teva, can you explain to
23 me what would cause you to prepare a
24 marketing brochure?

1 A. Yeah. So typically when a
2 product is approved, when that product
3 gets approved, the prescribing
4 information is then sent to the
5 organization. In order to communicate
6 with healthcare professionals, an
7 organization will develop resources of
8 promotional materials that goes through a
9 review process that they use.

10 Q. I see. And then those
11 brochures would be used for detailing
12 doctors?

13 A. That's correct.

14 Q. What's your highest level of
15 education?

16 A. A bachelor of arts.

17 Q. From what --

18 A. Villanova University.

19 Bachelor of arts.

20 Q. So you went to Villanova.

21 What year did you graduate?

22 A. '95.

23 Q. Who is your current
24 employer?

1 A. Harmony Biosciences.

2 Q. When did you hire on with
3 Harmony Biosciences?

4 A. About -- it's been about
5 16 days ago.

6 Q. Okay.

7 A. Fairly recent.

8 Q. So as of today you are a
9 former employee of Teva, correct?

10 A. That's correct.

11 Q. What do you do for Harmony
12 Biosciences?

13 A. I work in marketing.

14 Q. Are there any particular
15 drugs that you work on in marketing?

16 A. No, we don't currently
17 have -- we have two drugs in development,
18 but nothing is currently approved. It's
19 a younger startup company, only 51
20 employees.

21 Q. So you're working in
22 marketing for drugs that are yet to be
23 approved, correct?

24 A. Correct.

1 Q. What type of drugs are in
2 development?

3 A. There's a -- the lead
4 candidate is for narcolepsy.

5 Q. Any pain drugs?

6 A. No.

7 Q. Before hiring on with
8 Harmony Biosciences did you work for
9 Teva?

10 A. Yes, I did.

11 Q. And what was your last
12 position with Teva?

13 A. Director of marketing.

14 Q. What other positions did you
15 hold with either Cephalon or Teva?

16 A. So starting kind of, I guess
17 chronologically when I started with
18 Cephalon, I worked as a sales training
19 manager.

20 Q. Okay. You hired on as a
21 sales training manager?

22 A. I did.

23 Q. What year?

24 A. 2007.

1 Q. What was your next position
2 with either Cephalon or Teva?

3 A. It was sales manager.

4 Q. What year was that?

5 A. 2009. Or 2010, I'm sorry.

6 Q. In 2010 when you took the
7 sales manager job, was that with Cephalon
8 or Teva?

9 A. It was with Cephalon.

10 Q. All right. And did you have
11 a particular region that you oversaw?

12 A. The Mid-Atlantic.

13 Q. What states were included in
14 the Mid-Atlantic?

15 A. New Jersey, Pennsylvania,
16 Delaware, and, sorry, Maryland.

17 Q. Was any portion of Ohio
18 included in that region?

19 A. No, it was not.

20 Q. All right. How many years
21 were you sales manager over the
22 Mid-Atlantic?

23 A. Just under two years. It
24 was about a year and seven months.

1 Q. All right. What was your
2 next position with either Cephalon or
3 Teva?

4 A. It was with Cephalon. And
5 Cephalon and Teva was integrating at the
6 time. So that position was product
7 manager, marketing.

8 Q. So in the 2012 time frame,
9 you moved over to product manager?

10 A. Correct.

11 Q. Over what products?

12 A. Over Fentora, Amrix, and
13 Nuvigil.

14 Q. Nuvigil?

15 A. Mm-hmm.

16 Q. Fentora is an opioid,
17 correct?

18 A. Correct.

19 Q. What is Amrix?

20 A. Skeletal-muscle relaxant.

21 Q. And Nuvigil?

22 A. It's for narcolepsy, so wake
23 promoting.

24 Q. Okay. What were your job

1 duties as product manager for Fentora?

2 A. As a product manager in
3 marketing, your job duties are to develop
4 resources for Schedule II products like
5 opioids, and like Fentora, we only spoke
6 with healthcare professionals. We would
7 develop resources that would be utilized
8 by the field force during
9 doctor-to-sales-force interactions.

10 Q. How did that differ from the
11 sales training manager position that you
12 had held when you first started?

13 A. The way I would characterize
14 the sales training role is sales training
15 was really better characterized as
16 product training. What we would do is
17 when the prescribing information was
18 approved, we would then train the sales
19 representatives on that prescribing
20 information, the actual package insert
21 itself, to make sure they understood the
22 product. And then in marketing they
23 would develop resources, or ads or
24 brochures. So training was more product

1 training on the prescribing information,
2 and marketing resources.

3 Q. And those marketing
4 resources, when you were product manager,
5 would include leave-behinds for doctors,
6 for example?

7 A. Yes.

8 Q. And a leave-behind is a
9 brochure, perhaps?

10 A. Yes.

11 Q. Okay. All right. How long
12 were you product manager over Fentora?

13 A. So I was product manager for
14 Fentora for approximately, I would say,
15 two years. Yeah.

16 Q. All right. So that takes us
17 to 2014?

18 A. Correct.

19 Q. And then you were promoted
20 to director of marketing in 2014?

21 A. I was promoted to associate
22 director of marketing.

23 Q. And as associate director of
24 marketing in 2014, was Fentora under your

1 jurisdiction?

2 A. During part of the time it
3 was, and at some point, and I can't
4 recall the specific date, my
5 responsibility shifted solely to Nuvigil.

6 Q. I see. During that time
7 period when you were associate director
8 of marketing and had some responsibility
9 for Fentora, what were your job duties
10 with regard to Fentora?

11 A. They were fairly similar to
12 the product manager. The only addition
13 to scope would be that I had a product
14 manager that reported to me, so I kind of
15 oversaw some of the development of those
16 materials.

17 Q. During the time that you
18 were a sales training manager from 2007
19 to 2010, did you train the sales force on
20 Actiq and Fentora?

21 A. Only Fentora.

22 Q. Did someone else have
23 responsibility with regard to Actiq
24 during that time period?

1 A. No. When I had joined the
2 organization, Actiq was not currently in
3 promotion.

4 Q. Why did you leave Teva for
5 Harmony Biosciences?

6 A. I left Teva for Harmony
7 because -- well, I don't know how much
8 you know about the Teva situation, but
9 Teva has a new leader now, Kåre Schultz,
10 and one of the remits is there's been
11 significant costs and layoffs throughout
12 the organization. And one of the things
13 they announced earlier this year is that
14 all of our jobs would be relocated to
15 Parsippany, New Jersey. So I had a
16 decision with my family; I live here in
17 the area, and we couldn't move. And
18 honestly, I didn't feel that it was a
19 good opportunity for me to continue on.

20 Q. Were you ever disciplined at
21 Teva or Cephalon?

22 A. No.

23 Q. When you worked for
24 Cephalon -- well, strike that.

1 When you worked for Teva,
2 who paid you?

3 A. When I worked for Teva, who
4 paid me?

5 Q. Right. So I assume you were
6 paid on a --

7 A. Yeah.

8 Q. -- monthly, or every --
9 every two-week basis?

10 A. Yeah.

11 Q. Do you know where the money
12 came from?

13 A. From Teva.

14 Q. Do you know which Teva?

15 A. I -- I mean I would see my
16 direct deposit it would say Teva
17 Pharmaceuticals. I don't know if there
18 was a subsidiary or something under that,
19 I didn't know.

20 Q. As I understand it, there's
21 Teva USA and Teva Israel. Do you have
22 that understanding?

23 A. Yes.

24 Q. Okay. Do you know which of

1 those entities you worked for?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: Teva USA.

4 BY MR. MADDEN:

5 Q. And you believe that you
6 were paid by Teva USA?

7 A. To my knowledge, yes.

8 MR. MADDEN: Do you want a
9 paper copy or --

10 MR. ANDRISANI: Yes, please.

11 THE WITNESS: Sometimes
12 paper is easier.

13 MR. ANDRISANI: Yeah.

14 BY MR. MADDEN:

15 Q. I'm handing you and your
16 counsel Exhibit 2.

17 (Document marked for
18 identification as Exhibit
19 Teva-Day-2.)

20 BY MR. MADDEN:

21 Q. Mr. Day, Exhibit 2 has an
22 e-mail dated October 15, 2008, from you
23 to Dan Scott with a cc to Michael Tryba.
24 And you have an attached self-appraisal,

1 your first one, apparently with the
2 company. Do you see that?

3 A. I do see the e-mail, yes.

4 Q. All right. Have you
5 reviewed this e-mail recently?

6 A. No.

7 Q. And the attachment which is
8 two pages, do you recognize that as your
9 employee self-appraisal dated 10/15/2008?

10 A. Yeah, it looks familiar.

11 Q. Okay. You list your title
12 on this document as senior training
13 manager, correct?

14 A. Correct.

15 Q. And that was your first job
16 with Cephalon, right?

17 A. Correct.

18 Q. And your supervisors are
19 listed as Dan Scott and Mike Tryba,
20 correct?

21 A. Correct.

22 Q. Were they -- were they
23 indeed your supervisors?

24 A. They were.

1 Q. And what roles did they have
2 with Cephalon at that time?

3 A. So starting at the top, Dan
4 Scott was the -- I forget the exact
5 title -- our titles changed. I think he
6 was the senior director of sales training
7 and development, so he would have
8 overseen the entire organization.

9 Mike reported to Dan and was
10 probably the director of sales training,
11 overseeing specific products.

12 Q. Before joining Cephalon, had
13 you had any training or experience with
14 regard to sales training?

15 A. Yeah, I had worked for
16 Abbott virology. I worked in their HIV
17 division, and I was a national sales
18 training manager.

19 Q. I've -- I've seen some
20 documents that indicate your prior sales
21 experience before joining Cephalon was
22 in -- with HIV drugs, correct?

23 A. Yes.

Q. And did you have a

1 particular region?

2 A. I was not a manager. I was
3 a representative, and I worked in
4 Washington and Baltimore.

5 Q. Why did you leave that job
6 to join Cephalon?

7 A. The primary reason I left
8 that job was because my wife and I had
9 twin boys in Chicago and we were from the
10 Philadelphia area, so we needed to move
11 back home. We had lived up there for a
12 couple years, but it was hard so...

13 Q. All right. When you were
14 senior training manager for Cephalon, how
15 many salespeople did you oversee for
16 training?

17 A. I'm sorry, can you re-ask?

18 Q. Probably a bad question.

19 When you were senior
20 training manager for Cephalon, that we
21 see here in October of 2008, what
22 salespeople were you training?

23 A. This -- it would have been
24 the pain care sales force, which was

1 about 100 to 110 representatives.

2 Q. And you were training those
3 110 salespeople with regard to Fentora,
4 correct?

5 A. Yes, I was.

6 Q. And that would include the
7 state of Ohio sales reps, correct?

8 A. Yes.

9 Q. So if we look at Page 2 of
10 Exhibit 2, on your employee
11 self-appraisal, do you see the section
12 under strategic planning and agility?
13 The top third of the page.

14 A. Mm-hmm. Yes, I do.

15 Q. Okay.

16 A. It's highlighted here while
17 you are talking so I can -- okay.

18 Q. Either way is fine. If it's
19 easier for you to look at the screen, we
20 can do that.

21 A. Okay.

22 Q. But with regard to that
23 section, strategic planning and
24 agility --

1 A. Mm-hmm.

2 Q. -- it says, "Initial
3 Training Class redesign: Worked with
4 cross-functional teams to redesign the
5 class to the learner through a series of
6 application-based exercises that were
7 built around 'real world' scenarios."

8 A. Mm-hmm.

9 Q. Would that be playacting, I
10 guess, as one rep would play the rep, and
11 one rep would play the doctor?

12 A. Part of that would be, yes,
13 role playing. Mm-hmm.

14 Q. Okay. And how is it that
15 you redesigned that from what had taken
16 place before?

17 A. So if I can recall, the
18 original training system was a series of
19 modules with exams. So what we would do
20 is, from time to time, there would be
21 updates to like the prescribing
22 information. So we would update all of
23 those modules accordingly, redo the exams
24 each year, so that when you were testing

1 for the knowledge, you knew that you were
2 getting a recall. You didn't have the
3 same exams.

4 And then to your point, also
5 looking at some adult learning principles
6 and trying to incorporate like role play
7 and verbalization exercises.

8 Q. Prior to your becoming the
9 sales training manager, were there -- I
10 call them -- what do you call them,
11 modules --

12 A. Yeah.

13 Q. -- for the sales force with
14 regard to Fentora?

15 A. There were to my knowledge,
16 which I didn't develop prior to, but I --
17 those are what I was working off of.

18 Q. I see. And did you review
19 or utilize any modules for Actiq in your
20 job?

21 A. No.

22 Q. All right. The next heading
23 under strategic planning and agility is
24 training materials for 2008 POAs.

1 What -- what are those?

2 A. The acronym stands for plan
3 of action. And essentially what it is is
4 it's a meeting for -- typically it's a
5 meeting that is held once or twice a year
6 in which they develop, you know, a plan
7 of action. And there's additional
8 training and certification that was done.

9 Q. Okay. And would that once
10 or twice a year meeting for a plan
11 include only sales managers?

12 A. It would depend upon the
13 business need. Sometimes it would
14 include both sales managers and sales
15 representatives and sometimes it would
16 just be managers.

17 Q. All right. Your next entry
18 under strategic planning and agility is
19 Fentora 2008 business plan, and you
20 reference the FAST team planning
21 sessions. Do you see that?

22 A. Mm-hmm.

23 Q. Is that a yes?

24 A. Yes.

1 Q. What was the FAST team?

2 A. The FAST team was really
3 just an acronym for us as an organization
4 to start the year fast. At the beginning
5 of each year, like you would have to go
6 through like a recertification process.
7 Kind of systems would be reset and
8 sometimes that would take, you know,
9 upwards of three to four months. So as
10 that was transpiring, our goal was to
11 kind of get through that as quickly as
12 possible.

13 So it was just to get off to
14 a fast start with the year.

15 Q. Okay. I've seen references
16 to FAST as Fentora Assessment Strategy
17 Tactics. Have you heard of that before?

18 A. I don't recall that.

19 Q. I've also seen reference in
20 documents to the FAST team being that
21 team which was responsible for the
22 transition from Actiq to Fentora. Are
23 you familiar with that?

24 A. No.

1 Q. All right. Your next entry
2 under strategic planning and agility is,
3 "Noncancer Fentora modules."

4 Do you see that?

5 A. Yes.

6 Q. What were the noncancer
7 Fentora modules?

8 A. So during this time period,
9 as part of lifecycle management, the
10 medical department was seeking
11 indications outside of cancer. I believe
12 that this was filed as a new drug
13 application, which was subsequently not
14 approved. But this would have been, we
15 would have had to develop additional
16 training if it was approved.

17 Q. Did you have any role in
18 developing these noncancer modules for
19 Fentora?

20 A. I did begin the process of
21 reviewing them and starting the draft.
22 They were never fully approved, but yes.

23 Q. Okay.

24 A. It was in my remit.

1 Q. Did an outside firm or
2 company prepare the modules for your
3 review?

4 A. Yes. We did work -- we
5 typically worked with, like, outside
6 vendors who helped us.

7 Q. Do you recall the outside
8 vendor who prepared the noncancer Fentora
9 module?

10 A. I believe it was either EDSI
11 or ETSI or possibly Axiom. We've worked
12 with a lot of different vendors over the
13 years. I think it was one of those.

14 Q. About this time in
15 October 15, 2008, when you prepared your
16 employee self-appraisal, were you made
17 aware of anything with regard to a guilty
18 plea with regard to Actiq?

19 A. I was aware of the Corporate
20 Integrity Agreement which had been put in
21 place as a result of that, yes.

22 Q. And did you understand that
23 in the fall of 2008, Cephalon had agreed
24 to a Corporate Integrity Agreement

1 because of prior off-label promotion of
2 Actiq?

3 A. I did.

4 Q. So if that were taking place
5 at the same time, why would modules have
6 been prepared at that same time for what
7 was then off-label promotion of Fentora?

8 MR. ANDRISANI: Objection
9 form.

10 THE WITNESS: I always saw
11 Actiq and Fentora as different
12 products. And as different
13 products, Fentora had a different
14 lifecycle and medical development
15 program. So part of that was
16 indications, possibly or probably
17 outside of cancer, so they
18 continued to pursue those.

19 BY MR. MADDEN:

20 Q. Do you understand that Actiq
21 and Fentora had the same indication?

22 A. Yes.

23 Q. And that indication was for
24 opioid-tolerant patients suffering from

1 breakthrough cancer pain?

2 A. Yes.

3 Q. Okay. If we look at Page 3
4 of Exhibit 2 on your self-evaluation,
5 Roman Numeral IV, "What can we do to make
6 you more effective in your current
7 position?"

8 You have a Bullet Point 3,
9 which says, "Provide an additional
10 training manager to support the pain care
11 portfolio of products."

12 Do you see that?

13 A. Mm-hmm.

14 Q. Is that a yes, Mr. Day?

15 A. Yes.

16 Q. Thank you. Did you feel at
17 that time that you needed help doing the
18 sales training for pain care?

19 A. At that time the
20 responsibilities with Amrix were
21 increasing. I believe the organization
22 was also expanding to support that
23 product. So yes, at that time I felt it
24 was appropriate to bring another sales

1 training manager on to assist with that.

2 Q. Did you get that additional
3 sales training help?

4 A. I did.

5 Q. Who was that other manager
6 who was hired?

7 A. Kate Reedy.

8 Q. Was she hired soon after
9 your self-evaluation?

10 A. I can't recall the specific
11 time.

12 Q. How do you spell her last
13 name?

14 A. R-E-E-D-Y.

15 Q. All right. I'll hand you
16 what we marked at Mr. Spokane's
17 deposition at Exhibit 16, which is a
18 guilty plea agreement between the U.S.
19 government and Cephalon. If you turn to
20 Page 9, you will see a date of
21 September 26, 2008.

22 Do you see that?

23 A. Mm-hmm.

24 Q. Is that a yes?

1 A. Yes.

2 Q. Have you seen this document
3 before today?

4 A. I have not, no.

5 Q. Okay. If we go to Page 5 of
6 this document, Subsection 8 says,
7 "Between January 2001 and October 1,
8 2001, Cephalon promoted Actiq for uses
9 not approved by the FDA, including for
10 noncancer pain uses such as injuries and
11 migraines."

12 Do you see that?

13 A. Yes.

14 Q. Had that information been
15 brought to your attention when you hired
16 on at Cephalon?

17 A. Yes.

18 Q. Okay. And how was that
19 information brought to your attention?

20 A. This was information that we
21 built and included into the training
22 modules for Fentora. It was -- that was
23 a time when we were updating those that
24 we spoke about earlier.

1 Q. But at the same time you
2 were developing modules for off-label use
3 for Fentora, correct?

4 MR. ANDRISANI: Objection.

5 THE WITNESS: It was around
6 the same time.

7 BY MR. MADDEN:

8 Q. I'll hand you Exhibit 15
9 from Mr. Spokane's deposition. This is a
10 U.S. Department of Justice press release
11 dated September 29, 2008, regarding a
12 settlement between the U.S. government
13 and Cephalon regarding off-label
14 marketing. Did you have an understanding
15 before seeing this document that Cephalon
16 had paid \$425 million with regard to
17 off-label marketing of its drugs that
18 included Actiq?

19 A. I was not aware of the
20 dollar amount prior to reviewing this.

21 Q. If we go to the last full
22 paragraph on Exhibit 15 from Spokane.
23 Second sentence says, "The drug is a
24 strong and highly addictive narcotic,

1 with significant potential for abuse."

2 Do you see that?

3 A. Is it highlighted?

4 Q. Last full paragraph, second
5 sentence.

6 A. Yes.

7 Q. And would you agree with
8 that sentence?

9 A. Yes.

10 Q. Would you agree that the
11 same is true for Fentora?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: Yes.

14 BY MR. MADDEN:

15 Q. The last sentence on Page 1
16 of Exhibit 15 from Spokane that bleeds
17 onto Page 2 says, "Cephalon also promoted
18 Actiq for use in patients who were not
19 yet opioid tolerant and for whom it could
20 have life-threatening results."

21 Do you see that?

22 A. Yes.

23 Q. When you came in as sales
24 training manager, were you made aware of

1 those prior marketing activities?

2 A. Yes.

3 Q. How were you made aware of
4 those?

5 A. Through -- these continued
6 to be points of emphasis during the
7 training program that we were developing.
8 Opioid tolerance was critical because it
9 could lead to life-threatening
10 respiratory depression in patients.

11 Q. You get hired on in, what,
12 July of '07 as kind of the sales training
13 manager, correct?

14 A. Mm-hmm.

15 Q. Is that yes?

16 A. Yes.

17 Q. And who advised or trained
18 you when you were first hired as sales
19 training manager at Cephalon?

20 MR. ANDRISANI: Objection to
21 form.

22 THE WITNESS: I was trained
23 by a combination of people from
24 medical to my direct line manager

1 to meeting with marketing and even
2 regulatory personnel and legal.

3 BY MR. MADDEN:

4 Q. All right. With regard to
5 the items that we just looked at with
6 regard to Actiq -- Actiq, the guilty plea
7 and the prior off-label marketing
8 activities, who at Cephalon informed you
9 about that prior activity with regard to
10 Actiq?

11 A. Our compliance department.

12 Q. Who in the compliance
13 department?

14 A. Karen Lowney.

15 Q. Is she still with Teva?

16 A. She is not.

17 Q. Do you know where she is
18 now?

19 A. I do not.

20 Q. What did Karen tell you
21 about the Actiq situation and prior
22 off-label marketing activities?

23 MR. ANDRISANI: Objection.

24 THE WITNESS: Well, from my

1 recollection of the way the
2 organization communicated this is
3 that once they entered into the
4 CIA, there was actually an entire
5 training program and protocol that
6 was put in place through the
7 compliance department. I believe
8 it was three or four modules that
9 highlighted the important features
10 that we are talking here, and also
11 other key areas within the CIA.

12 So it wasn't like a
13 one-on-one interaction. It was a
14 companywide training initiative.

15 BY MR. MADDEN:

16 Q. And did you read and take
17 the test that went with those manuals?

18 A. Yes.

19 Q. Have you read the Corporate
20 Integrity Agreement entered by Cephalon?

21 A. I have not.

22 Q. But you read the modules and
23 took the test, correct?

24 A. Correct.

1 Q. So with regard to your work
2 as a sales training manager for Fentora,
3 you did not have the benefit of reading
4 the actual Corporate Integrity Agreement,
5 is that true?

6 A. Yes, that's true.

7 Q. When in the fall of
8 September of 2008 it was announced that
9 Cephalon had entered an agreement to pay
10 \$425 million for off-label promotion of
11 drug that included Actiq, were there
12 people who lost their jobs as a result of
13 that?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: I'm not aware
16 of specific displacements due to
17 that.

18 BY MR. MADDEN:

19 Q. Were you aware of your
20 predecessor as sales training manager,
21 whether that person was disciplined or
22 fired as a result of the prior off-label
23 promotion of Actiq?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: No.

2 BY MR. MADDEN:

3 Q. Were you aware of anyone at
4 Cephalon who lost their job as a result
5 of the prior off-label promotion of
6 Actiq?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: No.

9 BY MR. MADDEN:

10 Q. With regard to the modules
11 that we've discussed that went along with
12 the Corporate Integrity Agreement, did
13 you have any role or responsibility with
14 either reviewing those or administering
15 those?

16 A. No, I did not.

17 Q. Compliance had that
18 responsibility?

19 A. Yes, they did.

20 Q. And who in sales took those
21 modules?

22 MR. ANDRISANI: Objection to
23 form.

24 THE WITNESS: Not just

1 sales, everyone in the company.

2 BY MR. MADDEN:

3 Q. Those were companywide
4 modules?

5 A. Yes.

6 Q. All right. We saw on your
7 prior self-evaluation a reference to
8 FAST. Do you remember that?

9 A. Mm-hmm. Yes.

10 Q. And the FAST team?

11 A. Correct.

12 Q. And you had indicated that
13 your memory, and I'll grant you it's been
14 ten years.

15 A. Yeah.

16 Q. Your memory was that FAST
17 meant get out of the gates fast, right?

18 A. Correct.

19 Q. Okay. So I'm going to hand
20 you a document that we marked again in
21 Mr. Spokane's deposition as Exhibit 24.

22 MR. FAES: Are you going to
23 mark that as Exhibit 5 to this
24 deposition?

1 MR. MADDEN: No.

2 Does it have -- yeah, it has
3 an exhibit sticker from Spokane.

4 Okay. So we'll just stick with
5 that so we don't get confused.

6 BY MR. MADDEN:

7 Q. Have you seen this document
8 before?

9 A. I can't recall this
10 document.

11 Q. Okay.

12 A. I started in July of 2007.

13 Q. Got it. But do you see
14 there on the second page of Exhibit 24,
15 there's a reference to FAST team meaning
16 Fentora assessment strategy tactics?

17 Yeah, go back to --

18 A. This page?

19 Q. Yes, sir.

20 A. Yes, I do see that.

21 Q. Okay. Does that refresh
22 your recollection that the FAST team was
23 Fentora assessment strategy tactics?

24 A. It does.

1 Q. Okay. And do you recall
2 being on that team?

3 A. I don't recall being on that
4 team.

5 Q. All right.

6 A. This was a time -- like, not
7 to repeat. But this was a time when I
8 had just joined the organization. So I
9 was just getting onboard at -- so that's
10 my recollection of strategy, assessment,
11 and tactics is...

12 Q. Fair. May I see that copy?

13 A. All right. Sir, in the
14 lower right-hand of these pages is what
15 we call a Bates number.

16 A. Okay.

17 Q. So I'm going to reference
18 you to the Bates number in this document.

19 A. Okay. Sounds good.

20 Q. So if you'll turn to a Bates
21 number ending in 12.

22 A. Oh, it's up above the slide.

23 Q. It's right here, right --

24 A. I was looking for the same

1 stamp.

2 Q. -- below the slide.

3 A. Okay.

4 Q. So on that Bates number 12,
5 we've got a differentiation slide. Do
6 you see that?

7 A. I do.

8 Q. And under strategies, it
9 says, "Promote ROO subclass as ideal
10 treatment option for BTP."

11 Do you understand BTP to be
12 breakthrough pain?

13 A. I do.

14 Q. And what is ROO?

15 A. Rapid onset opioid.

16 Q. Fentora is a rapid onset
17 opioid, correct?

18 A. Prior to it -- it was
19 re-categorized as a transmucosal
20 immediate release fentanyl. Prior to
21 that nomenclature, it was -- the class
22 was considered ROO.

23 Q. All right. And Actiq was
24 also a rapid onset opioid?

1 A. Yes.

2 Q. Under bullet point 2 for
3 strategies, it says, "Launch broad label
4 and launch higher dose."

5 Do you see that?

6 A. Yes.

7 Q. And did you participate in
8 efforts to get a broader label for
9 Fentora?

10 A. I did not.

11 Q. You did draft the modules in
12 case a broader label was granted,
13 correct?

14 A. I did, yes.

15 Q. Or at least you reviewed
16 those modules, correct?

17 A. Yes.

18 Q. How about launch higher
19 dose, did you have any role or
20 responsibility with that?

21 A. No. That was with medical.

22 Q. Okay. Was a higher dose
23 ever approved by the FDA?

24 A. No, it was not.

1 Q. The last bullet point for
2 strategies is, "Strengthen the
3 utilization of KOLs across all regions."
4 Are those key opinion
5 leaders?

6 A. Yes, they are.

7 Q. Did you have any role or
8 responsibility with regard to that?

9 A. In my marketing role I did
10 interact with key opinion leaders, yes.

11 Q. How so?

12 A. During promotional
13 programming through the speakers bureau.

14 Q. And did you recruit
15 speakers?

16 A. No. The recruitment process
17 for the speakers bureau was done by a
18 cross-functional body, so it was
19 marketing, legal, compliance and medical
20 that would develop that speakers bureau.
21 So I didn't personally recruit.

22 Q. All right. How would you
23 utilize speakers or key opinion leaders
24 and marketing in your role as a sales

1 manager?

2 A. The sales representatives
3 would set up local programs and they
4 would utilize, usually, a local speaker
5 to review that promotional material, to
6 run the program.

7 Q. Let's go to Page 13 in this
8 document, the expansion page. Do you see
9 that?

10 A. Yes, I do.

11 Q. First strategy is to
12 maximize core prescribers to set the
13 stage for expanded use.

14 Do you see that?

15 A. Yes.

16 Q. What do you understand that
17 to mean?

18 A. I would understand that to
19 mean going to prescribers that were most
20 familiar with how to properly utilize
21 Fentora and talk to them about expanded
22 use should it occur.

23 Q. Do you understand that the
24 Fentora core prescribers were carryovers

1 from Actiq promotion?

2 A. I know -- yes. I know that
3 some prescribed Actiq and the same ones
4 would prescribe Fentora. Some would and
5 some wouldn't, yes.

6 Q. Do you understand there was
7 a marketing strategy in place to convert
8 the Actiq prescribers to Fentora
9 prescribers?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: No.

12 BY MR. MADDEN:

13 Q. You weren't part of that?

14 A. No.

15 Q. The last bullet point on
16 Page 13 says, "Increase recognition and
17 support of BTP and ROOs by professional
18 societies and patient advocacy groups."

19 Do you see that?

20 A. Yes.

21 Q. Did you have any role with
22 regard to that?

23 A. No.

24 Q. All right. Let's go to

1 Page 16 in this document.

2 A. Okay.

3 Q. This is a slide that says
4 abuse, addiction and diversion. And the
5 issue is identified as risk for abuse,
6 addiction and diversion. Do you see
7 that?

8 A. Yes.

9 Q. Do you understand that there
10 was a risk for abuse, addiction and
11 diversion with regard to Fentora?

12 A. Yes.

13 Q. The second strategy listed
14 on this page is, "Educate patients about
15 safe use of Fentora and allay fears of
16 opioids."

17 Do you see that?

18 A. Yes.

19 Q. What do you understand by
20 the "fears of opioids" that existed in
21 the 2007 time frame?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: Honestly I
24 don't know.

1 BY MR. MADDEN:

2 Q. Have you ever heard the term
3 "opioid phobia"?

4 A. Yes.

5 Q. Okay. What do you
6 understand opioid phobia to mean?

7 A. Just generally that
8 prescribers may be scared to use opioids.

9 Q. And when you were a sales
10 training manager, did you view opioid
11 phobia as an objection that a doctor may
12 raise with regard to Fentora?

13 MR. ANDRISANI: Objection.

14 THE WITNESS: No, I can't
15 recall specifically discussing
16 opioid phobia as an objection.

17 BY MR. MADDEN:

18 Q. Did you have any sales
19 training material that would assist a
20 sales representative in overcoming fears
21 of opioids that doctors may have?

22 A. No.

23 Q. Did you have any sales
24 training materials that the sales force

1 could use if a doctor raised the spectrum
2 of addiction with regard to Fentora?

3 A. Yeah. There was, as part of
4 the training protocol and within the
5 prescribing information in the important
6 safety information, it always indicated
7 that as a Schedule II product, there was
8 a risk of abuse, misuse, and diversion.
9 And that was something that we emphasized
10 to talk about on each and every call.

11 Q. When you say "each and every
12 call," were there regularly scheduled
13 calls with the sales force?

14 A. There were calls. I don't
15 know if they were regular.

16 Q. All right. Let's go to Page
17 44.

18 A. Okay.

19 Q. And this is, again, in
20 Spokane Exhibit 24, Page 44. We have a
21 slide that says, "Overview of 2008." Do
22 you see the acronyms that appear above
23 the months in this slide?

24 A. Yes.

1 Q. What are those acronyms?

2 A. Some I recognize. Some I do
3 not. Like ONS is Oncology Nursing
4 Society. APS is American Pain Society.

5 So I believe all of these
6 are medical conferences.

7 Q. Okay. And below the line of
8 months, you have numbers like 3040. What
9 do you understand those to be?

10 A. So those would probably --
11 this would be for the medical team. But
12 those would probably refer back to the
13 publications or posters that were being
14 presented during these conferences.

15 Q. All right. What role, if
16 any, did you have with regard to posters
17 that were presented at medical
18 conferences?

19 A. None.

20 Q. All right. On Page 44, it
21 says, "Support of marketing messages,
22 BTP," which is breakthrough pain,
23 "similar characteristics in cancer and
24 noncancer."

1 Do you see that?

2 A. Yes.

3 Q. Did you see posters that
4 were presented at these meetings that
5 conveyed the message that breakthrough
6 pain has similar characteristics in
7 cancer and noncancer?

8 A. I can't recall if any of
9 these publications were noncancer. I'm
10 not sure which data was --

11 Q. Would any of those posters
12 or publications be utilized by the sales
13 force?

14 A. No.

15 Q. Those would be posters or
16 publications that would be used at
17 meetings that doctors would attend?

18 A. Yes.

19 Q. And Cephalon would present
20 at those meetings, correct?

21 A. Yes, they would.

22 Q. All right. Let's go to Page
23 46 of this exhibit. This is a marketing
24 update slide, "Promotional and

1 educational resources." And then it says
2 "personal."

3 Do you have an understanding
4 as to what personal means on that slide?

5 MR. ANDRISANI: Objection.

6 THE WITNESS: I'm sorry.

7 Where does it say personal?

8 BY MR. MADDEN:

9 Q. At the very top.

10 A. No, I don't.

11 Q. All right. The first bullet
12 point references --

13 A. I see that. I don't know
14 what that means.

15 Q. You don't know what that
16 means?

17 A. No.

18 Q. At this time you're sales
19 training manager, correct?

20 A. Correct.

21 Q. And we see the first bullet
22 point as, "Efficacy flashcard released
23 7/9 to field force."

24 Do you see that?

1 A. Yes.

2 Q. Do you know what the
3 efficacy flashcard is?

4 A. I do.

5 Q. Okay. What is it?

6 A. So the marketing department
7 would develop resources. One of those
8 was an efficacy flashcard that talked
9 about the efficacy, but also the safety
10 of the product. It was like a one-pager,
11 front and back.

12 Q. Right. And the product that
13 we are talking about here is Fentora?

14 A. Correct. Yes.

15 Q. And the second bullet point
16 is, "WLF, neuropathic pain released 7/9
17 to field force," correct?

18 A. Correct.

19 Q. Do you recall that being
20 distributed to your sales force?

21 A. I don't specifically recall.

22 Q. Okay. Do you have any
23 reason to doubt that it was distributed
24 to your sales force in or about July 9th

1 of 2007?

2 A. Based on this document, no.

3 Q. Okay. Would you agree with
4 me that Fentora was not indicated for
5 neuropathic pain?

6 A. Yes.

7 Q. Do you know why then this
8 article was released to the sales force
9 in July of 2014?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: I do not.

12 BY MR. MADDEN:

13 Q. Did you train on it?

14 A. I did not.

15 Q. All right. Let's go to the
16 third bullet point on Page 46.

17 "Promotional resources with inclusion of
18 ten-minute onset data in development for
19 August rollout materials include," and
20 then we have a series of inclusions.

21 Do you recognize those
22 inclusions as having been distributed to
23 the sales force in 2007?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: I can't
2 specifically recall each one of
3 the resources and what was
4 distributed.

5 We do typically have, like,
6 a core visual aid, patient FAQ.
7 So it looks to be consistent with
8 what would be rolled out. Yes.

9 BY MR. MADDEN:

10 Q. What is a CVA or core visual
11 aid?

12 A. Core visual aid is
13 essentially the core resource that a
14 sales representative would use to talk to
15 healthcare professional. It's built off
16 of the prescribing information and
17 includes, like, efficacy, safety, those
18 types of things.

19 Q. What is a file card?

20 A. A file card, this is a
21 very -- I don't know -- usually a file
22 card is usually like a note card size
23 that has some information about the
24 product. It may be about a savings

1 program. It may be about the efficacy or
2 safety.

3 Q. What about an enlarged PI?
4 What is that?

5 A. That's just a larger version
6 of the PI that's printed out that's
7 easier for doctors or representatives to
8 read.

9 Q. How about pocket folder?

10 A. Same thing as kind of like
11 the core visual aid, but just a smaller
12 resource that would fit in your pocket if
13 you needed a reference.

14 Q. All right, sir. Let's go to
15 Page 52.

16 A. Mm-hmm.

17 Q. At Page 52 we have a slide
18 for sales training update.

19 A. Mm-hmm.

20 Q. One of the entries under
21 execute high priority deliverables is,
22 "IG for efficacy flashcard."

23 Do you know what that means?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: IG? No, I
2 can't recall what IG means for.

3 BY MR. MADDEN:

4 Q. The next entry is, "Fentora
5 module update to reflect label changes."

6 Do you see that?

7 A. Yes.

8 Q. And would that be what we
9 saw in your self-evaluation, the module
10 that anticipated a noncancer indication
11 for Fentora?

12 MR. ANDRISANI: Objection.

18 BY MR. MADDEN:

19 Q. And then we have, "Establish
20 goals and learning objectives of
21 additional key promotional pieces." And
22 there's a reference to a BTP flashcard.

23 Do you see that?

24 A. Yes, I do.

1 Q. Do you recall the sales
2 force using a BTP flashcard on details
3 with doctors?

4 A. I can recall the resource.
5 I can't recall seeing it being actually
6 used in the field.

7 Q. Would you have trained on
8 that resource?

9 A. We -- yes, I think we would
10 have trained on that.

11 Q. And you understand BTP to be
12 breakthrough pain, correct?

13 A. Correct.

14 Q. What about PK flashcard? Do
15 you know what that means?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: That was
18 pharmacokinetic flashcard.

19 BY MR. MADDEN:

20 Q. I failed to say at the
21 beginning of the deposition that, you
22 know, you can take a break whenever we
23 want. I typically take a break every
24 hour, so we can take a break now if you'd

1 like.

2 A. If you'd -- yeah. That's
3 fine. Would you like -- we can do every
4 hour, that's fine.

5 THE VIDEOGRAPHER: Going off
6 record. The time is 10:29.

7 (Short break.)

8 THE VIDEOGRAPHER: We are
9 going back on record. Beginning
10 of Media File Number 2. The time
11 is 10:41.

12 BY MR. MADDEN:

13 Q. Mr. Day, I handed your
14 counsel Exhibit 3.

15 (Document marked for
16 identification as Exhibit
17 Teva-Day-3.)

18 BY MR. MADDEN:

19 Q. Do you see Exhibit 3 is a
20 cover e-mail from you dated May 21, 2010,
21 with the subject area manager interview?

22 A. Yes.

23 Q. And you addressed the e-mail
24 to Randy Spokane and Chandler Tatum,

1 correct?

2 A. Correct.

3 Q. Who were they in that time
4 period, within the company?

5 A. Randy and Chandler were
6 regional directors. One above a sales
7 manager.

8 Q. Okay. When you were a sales
9 training manager, did you report to
10 either Mr. Spokane or Mr. Tatum?

11 A. No.

12 Q. You were sending your resumé
13 along for the Mid-Atlantic position here,
14 correct?

15 A. Yes.

16 Q. Why is it that you wanted to
17 move from sales training into a sales
18 management position?

19 A. It was an opportunity for
20 promotion. And for me, I thought it was
21 career development to get more experience
22 within the organization.

23 Q. All right. If we go to the
24 first page of your attached resumé, under

1 senior manager sales training and
2 development, you list management and
3 develop -- oh, I'm sorry. "Management
4 and development of one sales training
5 manager and all training initiatives to
6 support the promotion of two
7 pharmaceutical products, Amrix and
8 Fentora."

9 Do you see that?

10 A. Yes.

11 Q. What is sales training
12 manager that you reference there?

13 A. Who --

14 Q. Oh, that's a person. So you
15 developed one sales training manager?

16 A. Yes.

17 Q. That's the woman that you
18 mentioned earlier?

19 A. Yes.

20 Q. Okay. And then your second
21 bullet point there on the first page of
22 your resumé says, "Development of the
23 2010 sales training plans for Fentora and
24 Amrix," correct?

1 A. Correct.

2 Q. Would those have been the
3 modules that we discussed earlier?

4 A. Yes.

5 Q. If we go to the second page
6 of your resumé in this document, the
7 first bullet point at the top says,
8 "Developed" -- "Developed of the 2008
9 training plan to support the Fentora
10 brand strategy."

11 Do you see that?

12 A. Yes.

13 Q. How were you made aware of
14 the Fentora brand strategy?

15 A. The Fentora brand strategy
16 was communicated to the cross-functional
17 organization via a meeting.

18 Q. Would the marketing plan
19 have been presented to you at that
20 meeting?

21 A. Yes.

22 Q. The second bullet point
23 says, "Redesign of the initial training
24 curriculum to incorporate blended

1 learning approach."

2 Do you see that?

3 A. Yes.

4 Q. What is the blended learning
5 approach to which you refer there?

6 A. It's a term used in adult
7 learning to talk about blending different
8 learning styles, like exams or role play
9 or presentations, blending that
10 altogether and not just making it
11 didactic.

12 Q. Your fourth bullet point on
13 Page 2 references a managed care
14 curriculum for all Cephalon field-based
15 employees.

16 Do you see that?

17 A. Yes.

18 Q. What was the managed care
19 curriculum?

20 A. The managed care curriculum
21 was developed in conjunction with the
22 managed care team. And it talked about
23 different formularies, like it would
24 have, like -- whether it was -- like, a

1 product was approved, like an NBC block
2 or if it was approved with a prior
3 authorization. It was training around
4 that -- those terms.

5 Q. So for example, Fentora,
6 some third-party payers may require a
7 prior authorization before the drug could
8 be prescribed, correct?

9 A. Yes.

10 Q. And you trained your sales
11 force on how to deal with those prior
12 authorization?

13 A. Not how to deal with the
14 prior authorizations. The doctor on
15 behalf of the patient would work with the
16 managed care company. But we would train
17 them on if it needed a prior
18 authorization. So if a doctor asked a
19 question, "I have a Blue Cross Blue
20 Shield patient," they could say, "That
21 would be a prior authorization. You need
22 to go to Blue Cross and download that
23 form."

24 And then the doctor, on

1 behalf of the patient, if the patient
2 consented, would communicate to Blue
3 Cross.

4 Q. Did Cephalon or later Teva
5 have a hotline that doctors could call to
6 work their way through that process?

7 A. They did, yes.

8 Q. And the sales reps were
9 trained on that hotline?

10 A. The sales reps were trained
11 on it, to the extent that they knew the
12 number. But they weren't to call it.
13 And they weren't to utilize it as their
14 own resource.

15 Q. Are you aware of any sales
16 reps for either Cephalon or Teva who
17 assisted the doctors with either the
18 hotline or the prior authorization
19 process?

20 MR. ANDRISANI: Objection to
21 form.

22 THE WITNESS: No.

23 BY MR. MADDEN:

24 Q. Who in managed care did you

1 work with?

2 A. Deb Bearer.

3 Q. What was her role with the
4 company?

5 A. Well, she -- I believe -- I
6 think, you know, it was like associate
7 director and then probably director of
8 market -- of market access or managed
9 care.

10 Q. I've seen a document, I
11 think, in your file where you list Deb
12 Bearer as a mentor.

13 A. Yes.

14 Q. Did you consider her a
15 mentor?

16 A. Currently? Well, she was a
17 mentor. Yeah.

18 Q. Okay. And why do you say
19 that?

20 A. Her area, I would say, of
21 expertise was really within managed care.
22 And working in the pharmaceutical
23 industry, that was something that I
24 wanted to learn more about.

1 Q. Were there any other people
2 at Cephalon or Teva that you considered
3 mentors?

4 A. Specifically, no. I mean,
5 the way I've kind of always run my career
6 is -- I mean at different points, I try
7 to take the best of the people so
8 they're, you know -- like, Dan Scott may
9 have been, we could call him a mentor at
10 one point, but that's just kind of -- but
11 does that make sense?

12 Q. Sure. What about
13 Mr. Spokane? Did you consider him a
14 mentor?

15 A. Yeah. He would be from a
16 sales perspective, yeah.

17 (Document marked for
18 identification as Exhibit
19 Teva-Day-4.)

20 BY MR. MADDEN:

21 Q. I'll hand you what we have
22 marked as Exhibit 4. Exhibit 4 is an
23 e-mail string. And on Page 1 you will
24 see the e-mail dated Thursday, August 18,

1 2016, at 1:38 p.m. You are listed as one
2 of the recipients.

3 Do you see that?

4 A. Yes.

5 Q. And then if we, I'm going to
6 refer you to Bates numbers here, Mr. Day.

7 A. Okay.

8 Q. So about halfway through
9 this exhibit, you have a Bates number
10 that ends in 435.

11 A. Yes.

12 Q. Do you see that?

13 A. Yes.

14 Q. And there we have an e-mail
15 from Dalton Tomlinson dated Tuesday,
16 August 16, 2016.

17 Do you see that?

18 A. Yes.

19 Q. What was Mr. Tomlinson's
20 role with the company?

21 A. He would have been at this
22 point, I believe, vice president of
23 marketing.

24 Q. And at this point in 2016,

1 we are talking about Teva, correct?

2 A. Correct.

3 Q. All right. So

4 second-to-last page, which is Bates
5 number ending in 437, you're getting a
6 shout out in this e-mail congratulating
7 you for your promotion to director of
8 abuse-deterrent opioids.

9 Do you see that?

10 A. Yes.

11 Q. And were you indeed promoted
12 to director of abuse-deterrent opioids?

13 A. I was, yes.

14 Q. And was that in or about
15 August of 2016?

16 A. Yes.

17 Q. What did your promotion to
18 director of abuse-deterrent opioids
19 entail?

20 A. We essentially had a lead
21 candidate for an abuse-deterrent
22 formulation that's indicated here called
23 Vantrela ER that was in development. My
24 role was to see and work with the

1 cross-functional team for that NDA, that
2 new drug application, to get the
3 prescribing information filed and then
4 eventually approved, which it was.

5 Then my role would be as the
6 marketing lead to develop the materials
7 that would be utilized and ultimately
8 build the team that would help launch the
9 product.

10 Q. This abuse-deterrent opioid,
11 was it fentanyl based?

12 A. It was not. It was
13 hydrocodone based.

14 Q. Okay. And you indicated
15 that the NDA was granted by the FDA?

16 A. It was.

17 Q. So the drug was given
18 approval by the FDA?

19 A. It was.

20 Q. And did the drug ever
21 launch?

22 A. It did not.

23 Q. Why didn't the drug launch?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: There was a
2 significant delay in the FDA
3 approval process of a year and a
4 half. And the exclusivity of the
5 drug was three years, so by the
6 time we could get the drug to
7 market, it could potentially go
8 generic due to manufacturing.

13 BY MR. MADDEN:

14 Q. Did you participate in
15 decisionmaking with regard to launch of
16 the product?

17 A. Yes.

18 Q. You were in meetings where
19 it was discussed whether the product
20 would launch or not, correct?

21 A. Yes.

22 Q. And you were there
23 representing marketing?

24 A. Correct.

1 Q. All right. Part of this
2 e-mail that we are looking at, which
3 describes your promotion to director of
4 abuse-deterrent opioids says that you had
5 a role with regard to an abuse deterrent
6 educational campaign called Pain Matters.

7 Do you see that?

8 A. Yes.

9 Q. What was that abuse
10 deterrent educational campaign?

11 A. So Pain Matters was an
12 unbranded campaign that healthcare
13 professionals and doctors could access.
14 It was a website that was designed to
15 provide information and resources, not
16 only about abuse-deterrent formulations,
17 but about safe and appropriate use of
18 opioids.

19 Q. And the campaign was called
20 Pain Matters?

21 A. It was.

22 Q. What media were used in that
23 campaign?

24 A. The media, so we had search

1 and display, which is primarily internet
2 based. There was one satellite media
3 tour in which there were interviews, like
4 a half-hour interview that was conducted
5 and different news outlets from across
6 the country would call in to talk with
7 the healthcare professional about the
8 Pain Matters campaign. It was primarily
9 internet based. But there was a media
10 tour live.

11 Q. When that Pain Matters
12 internet campaign and media campaign were
13 done, what opioid pain medicines was Teva
14 promoting at the time?

15 A. We weren't. There was no
16 promotion of Fentora at the time, or it
17 was just migrating away. And then we
18 were moving to the abuse-deterrent
19 portfolio which never launched.

20 Q. So the company ran a media
21 and internet campaign for opioids without
22 any opioids being currently detailed or
23 marketed, correct?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: Yes.

2 BY MR. MADDEN:

3 Q. And you called it an
4 unbranded campaign, right?

5 A. Mm-hmm, yes.

6 Q. Yes. What do you mean by
7 unbranded?

8 A. Means that -- it's a word
9 that we used that it was not -- branded
10 typically refers to like a product.

11 Unbranded, usually when we use that,
12 refers to not a product.

13 Q. At the time that the Pain
14 Matters -- Pain Matters campaign was
15 being run, did Teva distribute generic
16 opioids?

17 A. So I would assume yes. I
18 didn't have responsibility for the
19 generic portfolio, but.

20 Q. So you're running this
21 campaign called Pain Matters that has
22 both media and internet. What was the
23 purpose for running that campaign?

24 A. The sole purpose of Pain

1 Matters was to provide information and
2 education around the safe and effective
3 use of opioids.

4 Q. Why would the company run a
5 campaign regarding the safe and effective
6 use of opioids, if the company wasn't
7 marketing any opioids at the time?

8 MR. ANDRISANI: Objection.

9 THE WITNESS: It was a
10 program that through our AOP
11 process, we decided to continue,
12 because we had had relationships
13 within pain management and within
14 oncology.

15 So even though there was a
16 gap in the portfolio of products,
17 it made sense to continue to -- to
18 help where we could.

19 BY MR. MADDEN:

20 Q. Fentora was still being sold
21 at the time of the Pain Matters campaign,
22 correct?

23 A. I believe, I can't recall
24 the specific time when Fentora was turned

1 on and off. But at one point it was very
2 lightly promoted through an inside sales
3 team. And the Pain Matters campaign was
4 running. My recollection is that was
5 maybe about a six-month period and then
6 promotions ceased on Fentora.

7 Q. Okay. Your previous answer
8 was that the Pain Matters campaign was
9 run with regard to the safe and effective
10 use of opioids and to help. Do you
11 recall that testimony from just a minute
12 ago?

13 MR. ANDRISANI: Objection.

14 THE WITNESS: Yes.

15 BY MR. MADDEN:

16 Q. And you were in between
17 opioid marketing for Fentora and this
18 potential abuse-deterrant drug called
19 Vantrela, correct?

20 A. Yes.

21 Q. When you say the campaign
22 was run to help, do you mean it was run
23 to help with the then evident opioid
24 epidemic?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: It wasn't
3 specifically targeted towards the
4 opioid epidemic. It was geared
5 towards providing education and
6 resources for pain management
7 specialists on the treatment of
8 pain.

9 BY MR. MADDEN:

10 Q. With opioids, right?

11 A. With -- well, not just
12 opioids. There was other information on
13 there as well, like urine drug screen
14 testing, information on proper nutrition.
15 So it was more balance. It wasn't solely
16 about the use of opioids.

17 Q. Was there anything in the
18 pain -- I'm sorry. Was there anything in
19 the Pain Matters campaign that addressed
20 pain drugs other than opioids?

21 A. Can you re-ask the question?
22 I'm sorry.

23 Q. Sure, sure. You told me
24 that the Pain Matters campaign was

1 broader than opioids --

2 A. Yeah.

3 Q. -- that it included other
4 treatments that didn't involve drugs,
5 correct?

6 A. It didn't mention specific
7 treatments.

8 Q. Okay.

9 A. But like diet, exercise.

10 Q. Right. Nondrug
11 treatments --

12 A. Nondrug treatments were not
13 mentioned in the campaign --

14 Q. All right.

15 A. -- were.

16 Q. In the Pain Matters
17 campaign, was there any mention of
18 pharmaceutical treatment other than
19 opioid treatment?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: I would have
22 to go back and look.

23 BY MR. MADDEN:

24 Q. Okay.

1 A. But there may have been.

2 Q. We'll get to that.

3 A. Okay. That's fine.

4 (Document marked for
5 identification as Exhibit
6 Teva-Day-5.)

7 BY MR. MADDEN:

8 Q. Mr. Day, I handed you
9 Exhibit 5. Do you recognize Exhibit 5 as
10 a copy of your LinkedIn page?

11 A. Yes.

12 Q. All right. And do you still
13 maintain a LinkedIn page?

14 A. I do.

15 Q. All right. And does
16 Exhibit 5 appear to be a fair and
17 accurate copy of your LinkedIn page?

18 A. It does.

19 Q. And we see on your LinkedIn
20 page that you list the two positions with
21 Cephalon that we have talked about which
22 are senior manager sales training and
23 development for pain care, and then area
24 field sales manager for pain care,

1 correct?

2 A. Correct.

3 Q. And then you list for Teva,
4 director -- director of marketing,
5 CNS/migraine pain care, correct?

6 A. Correct.

7 Q. And for some time in that
8 period that you were director of
9 marketing, CNS/migraine pain care, you
10 had some responsibility with regard to
11 Fentora, right?

12 A. Yes.

13 Q. You don't have on this
14 LinkedIn page your promotion to director
15 of abuse-deterrant opioids, correct?

16 A. Correct.

17 Q. Why didn't you list that?

18 A. It transpired very quickly
19 from one role to the other. And that's
20 true of all the roles here, like a sales
21 trainer, or product manager, an associate
22 director, director, abuse deterrent. So
23 there's several roles that we discussed
24 today. So I just rolled it into one.

1 Q. I see. So while you were
2 marketing director for CNS, you also had
3 the role of abuse-deterrent opioid
4 director, correct?

5 A. Yes. At a certain time from
6 the previous e-mail.

7 Q. And in that role as director
8 of abuse-deterrant opioids, did you
9 coordinate the Pain Matters campaign?

10 A. Yes.

11 Q. So any website or media that
12 was generated with regard to that
13 campaign, you reviewed?

14 A. Yes.

15 (Document marked for
16 identification as Exhibit
17 Teva-Day-6.)

18 BY MR. MADDEN:

19 Q. I'll hand you Exhibit 6.

20 Exhibit 6 is an e-mail dated January 14,
21 2010, from you to Mr. Tryba, with your
22 2009 year-end review, correct?

23 A. Yes.

24 Q. And then we have an attached

1 document which is your performance
2 summary, correct?

3 A. Correct.

4 Q. If we go to the third page
5 in this document, which has a Bates
6 number ending 769.

7 A. Yes.

8 Q. Under performance results it
9 says, "Matt has successfully managed the
10 PCS expansion of 70 PCS TSSs, and 35 CNS
11 TSSs."

12 What are PCS TSSs?

13 A. Pain care territory sales
14 specialists.

15 Q. And did that expansion go to
16 the promotion of Fentora?

17 A. Fentora and Amrix.

18 Q. And what are the CNS TSSs?

19 A. Central nervous system
20 territory sales specialists.

21 Q. And did they promote
22 something other than Fentora?

23 A. The CNS team promoted
24 Nuvigil and Amrix.

1 Q. If you go to the next page
2 sir, with the Bates number ending 770,
3 there in the last paragraph it says,
4 "Matt continues to work with Amrix and
5 Fentora PDRC members to improve overall
6 process and improve compliance with
7 GPO-110 regarding individual roles and
8 responsibilities."

9 Do you see that?

10 A. Yes.

11 Q. What is PDRC?

12 A. It stands for promotional
13 development review committee. It's the
14 group of people that review promotional
15 materials.

16 Q. All right. And then
17 GPO-110, what is that?

18 A. I can't recall that specific
19 policy. I would believe that would be
20 the policy that would govern PDRC.

21 Q. When you were a regional
22 sales manager overseeing the Mid-Atlantic
23 for Fentora, were there bonus plans in
24 place for the sales representatives with

1 regard to Fentora sales?

2 A. Yes.

3 Q. Can you describe those for
4 me?

5 A. So the bonus plans changed
6 year by year. The way I would describe
7 the bonus plan was, there were
8 essentially three parts. There was what
9 I would term administrative, which
10 included things like compliance, exams,
11 and then there was Fentora and Amrix. So
12 the -- the bonus would be made up of
13 those three components: Administrative,
14 Fentora, and Amrix.

15 Q. What do you mean by
16 administrative?

17 A. That would be like
18 completing expense reports on time. Just
19 kind of the day-to-day business.
20 Developing routing schedules. The
21 day-to-day business, things that a
22 representative would do or need to do.

23 Q. Okay. And was a portion of
24 the bonus plan tied to sales for that

1 representative?

2 A. Yes.

3 Q. And what percentage?

4 A. I can't recall the exact
5 percentage, and it changed year over
6 year. Sales operations department, which
7 we had, would set the quota methodology.

8 Q. Give me one second. I'm
9 trying to find my stickers. Here they
10 are.

11 (Document marked for
12 identification as Exhibit
13 Teva-Day-7.)

14 BY MR. MADDEN:

15 Q. Do you have an understanding
16 while you were either sales manager --
17 sales training manager or sales manager
18 for the Mid-Atlantic as to what
19 percentage of Fentora sales were
20 off-label?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: I do not.

23 BY MR. MADDEN:

24 Q. Has anyone ever told you

1 that it was 80 to 90 percent off-label?

2 A. I've never seen that data.

3 Q. Okay. No one ever

4 communicated that to you at the company?

5 A. No.

6 Q. If I told you that Fentora

7 sales were 80 to 90 percent off-label,

8 that is, not for breakthrough cancer

9 pain, would you have any reason to

10 disagree with me?

11 MR. ANDRISANI: Objection.

12 THE WITNESS: I don't have

13 the data. I don't know how we

14 would know that.

15 BY MR. MADDEN:

16 Q. Okay. So as a sales manager

17 and a sales training manager, that data

18 was not communicated to you, is that

19 true?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: Yes.

22 BY MR. MADDEN:

23 Q. All right. Sir, I'll hand

24 you Exhibit 7. Exhibit 7 has a cover

1 e-mail of June 29, 2011, from you with
2 the subject, "Second semester bonus
3 plan."

4 Do you see that?

5 A. Yep.

6 Q. It's an e-mail to the team.
7 Would that be your sales team for the
8 Mid-Atlantic?

9 A. Yes.

10 Q. The attachment has a set of
11 slides dated -- well, if you go to the
12 third page of this document, it says,
13 "Semester 2, 2011 bonus plan."

14 Do you see that?

15 A. Mm-hmm.

16 Q. Is that a yes?

17 A. Yes.

18 Q. Okay. Did you draft these
19 slides?

20 A. No.

21 Q. Who drafted these slides?

22 A. Sales operations.

23 Q. Okay. And would sales
24 operations communicate these slides to

1 you and then you communicate them to the
2 team?

3 A. Usually sales operations
4 would communicate directly to the entire
5 sales organization. They would send it
6 to us and we would follow up to see if
7 there were any questions.

8 Q. Is the slide plan that's
9 attached to your e-mail that you sent to
10 your sales team the bonus plan that was
11 in effect at that time, to your
12 knowledge?

13 A. To my knowledge, yes.

14 Q. And if -- I don't have page
15 numbers for you here, unfortunately.

16 A. That's okay.

17 Q. So we're going to have to
18 struggle through this. But the fourth
19 page, which you happen to be on, "Fentora
20 2011 forecast annual," can you explain
21 what's depicted in that graph for me?

22 A. That would be the annual
23 gross sales for Fentora.

24 Q. Okay. And what's the "IC

1 demand" part of that graph?

2 A. It looks like based on the
3 footer, that that is demand sales less
4 any DNC.

5 Q. What is DNC?

6 A. Do not compensate.

7 Q. Okay. What did DNC, or do
8 not compensate, stand for?

9 A. It would be doctors that
10 would not be compensated -- I'm sorry.
11 Not doctors. It would be if a doctor
12 generated a prescription, was on the DNC
13 list, a representative would not receive
14 compensation.

15 Q. Okay. As I understand it,
16 there was a DNC or do not compensate list
17 which were doctors that the sales force
18 had flagged to not call on, correct?

19 A. Correct.

20 Q. And the company would send
21 out a list periodically of doctors in a
22 region who were not to be called upon,
23 correct?

24 A. Correct.

1 Q. What were the reasons that a
2 doctor would land on that DNC list?

3 A. I didn't review the DNC
4 list. That was typically done by legal
5 and compliance. So they would set the
6 methodology to which doctors were
7 determined to be added to the do not
8 compensate.

9 Q. Okay. Well, you were a
10 sales manager. If a doctor were running
11 a pill mill, that could be a reason that
12 the doctor could land on the DNC list,
13 right?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: I'm not aware
16 of any doctors running a pill mill
17 or -- so --

18 BY MR. MADDEN:

19 Q. Have you not seen news
20 reports of doctors who ran pill mills for
21 opioids -- the opioid epidemic?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: I've seen
24 reports, yes.

1 BY MR. MADDEN:

2 Q. Okay. And so why is it that
3 you say that such a doctor would not land
4 on the DNC list?

5 MR. ANDRISANI: Objection.

6 THE WITNESS: What I'm
7 saying is I'm not aware of any
8 doctors that were running a pill
9 mill that were in my call
10 universe, and -- yeah.

11 BY MR. MADDEN:

12 Q. Okay. For your Mid-Atlantic
13 region, were there doctors on a DNC list?

14 A. Yes.

15 Q. What were the reasons those
16 doctors were on a DNC list?

17 MR. ANDRISANI: Objection.

18 THE WITNESS: I don't
19 specifically know the reasons they
20 were on the do not call list,
21 because they were placed on the
22 list by legal and compliance.

23 BY MR. MADDEN:

24 Q. And do you know any of the

1 reasons why any of those doctors were
2 placed on the DNC list?

3 MR. ANDRISANI: Objection.

4 THE WITNESS: Not
5 specifically. When we had the do
6 not call, we were not to call on
7 those doctors. There was no other
8 discussion.

9 BY MR. MADDEN:

10 Q. Okay.

11 A. We didn't ask questions.

12 Q. So looking at that graph,
13 how would a doctor who is on the DNC list
14 who wrote a prescription for Fentora, how
15 would that data be captured?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: How would that
18 data be captured?

19 BY MR. MADDEN:

20 Q. Right. So we have a graph
21 that says gross Fentora sales of
22 \$205 million, right?

23 A. Mm-hmm.

24 Q. Is that a yes?

1 A. Yes.

2 Q. And then we have a graph
3 that shows IC demand, which is a graph
4 that is total sales minus DNC sales of
5 \$201.9 million, correct?

6 A. Correct.

7 Q. So that difference of
8 \$3 million in sales approximately,
9 \$3.1 million in sales was by doctors who
10 were on the DNC list, right?

11 A. Based on this you can assume
12 that, yes.

13 Q. Do you know how that data
14 was captured; that is, how the company
15 knew that \$3.1 million of its product was
16 being written by doctors who were not
17 on -- who were on its do not call list?

18 MR. ANDRISANI: Objection.

19 THE WITNESS: I didn't
20 receive the aggregate of data,
21 just a subset of it. That data
22 would come into sales operations.

23 BY MR. MADDEN:

24 Q. From whom?

1 A. From IMS.

2 Q. What is IMS?

3 A. It's now IQVIA. That's the
4 data vendor that supplies the
5 prescription data to the pharmaceutical
6 companies.

7 Q. Okay. So when you as a
8 regional sales -- were you regional sales
9 manager?

10 A. I was area sales manager.

11 Q. When you as an area sales
12 manager were forwarded this compensation
13 plan which had a graph that showed
14 \$3.1 million of Fentora was being written
15 by doctors who were on a do not call
16 list, did you or anyone else from the
17 company report that to the DEA as being
18 suspicious?

19 MR. ANDRISANI: Objection.

20 THE WITNESS: I did not. I
21 don't know about the company. For
22 do not call doctors, we didn't
23 call on them.

24 BY MR. MADDEN:

1 Q. I understand. Do you
2 understand, as a sales training manager,
3 that there are duties under the
4 Controlled Substances Act to report
5 suspicious activities with regard to
6 opioids?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: As a sales
9 training manager, I'm aware of
10 that, yes.

11 BY MR. MADDEN:

12 Q. And I presume you trained
13 your sales force of their duties under
14 the Controlled Substances Act?

15 A. Part of their training was
16 in the risk map module, which would
17 include things like discussing training
18 around abuse, misuse, diversion of
19 products. Yes.

20 Q. And as you sit here today,
21 you know that you didn't report to the
22 DEA that \$3.1 million of these Fentora
23 sales were by doctors on the DNC list,
24 right?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: I didn't
3 report that, no.

4 BY MR. MADDEN:

5 Q. Do you know of anybody in
6 the company who did report that?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: I wouldn't
9 have knowledge of that. I don't
10 know.

11 BY MR. MADDEN:

12 Q. Would you agree with me that
13 if \$3.1 million of Fentora sales for this
14 time period were written by doctors on
15 the company's own do not call list, that
16 that would be suspicious activity?

17 MR. ANDRISANI: Objection.

18 THE WITNESS: I don't know.

19 BY MR. MADDEN:

20 Q. Okay. Let's look a couple
21 pages further in this PowerPoint. A
22 slide called, "Pain care bonus plan."
23 Semester 2, 2011. It might be easier to
24 follow it on the screen.

1 A. Okay.

2 Q. So we see a sales specialist
3 level indicated here. Would that be just
4 your sales force that worked under you?

5 A. Yes.

6 Q. And then we have a target
7 bonus of \$15,000 with 60 percent
8 allocated to Fentora sales and 40 percent
9 allocated to Fentora MBO, correct?

10 A. Yes.

11 Q. Does this refresh your
12 recollection that sales drove 60 percent
13 of the bonus plan?

14 A. Yes.

15 Q. What is MBO?

16 A. Management by objective.

17 Those were the administrative portions of
18 the plan that I talked about earlier.

19 Q. Those were, you know, making
20 your quota sales calls, things like that?

21 A. Making sales calls, expense
22 reports, completing, you know, just
23 day-to-day business things on time, yes.

24 Q. Okay. Going back to the

1 Controlled Substances Act, in your time
2 as a sales training manager, what did you
3 train the sales force with regard to
4 reporting suspicious activities as
5 regards to Fentora?

6 MR. ANDRISANI: Objection.

9 BY MR. MADDEN:

10 Q. Yes.

11 A. Well, one module in
12 particular trained the representatives on
13 the risks of abuse, misuse, and diversion
14 of Schedule II products like Fentora.

15 Q. Did that module inform the
16 sales reps as to any duties to report to
17 the DEA with regard to abuse or
18 diversion?

19 MR. ANDRISANI: Objection.

20 THE WITNESS: No.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-8.)

24 BY MR. MADDEN:

1 Q. I'll hand you Exhibit 8.

2 All right. Exhibit 8 is a June 22, 2010,
3 e-mail from Sheldon Bertz to you. What
4 was Mr. Bertz's role with the company?

5 A. He was in sales operations.

6 Q. Okay. And we have a subject
7 of, "Second quarter 2010 PCS manager
8 bonus plan."

9 Do you see that?

10 A. Yes.

11 Q. And that forwarded an
12 earlier e-mail of May 20, 2010 to you,
13 correct?

14 A. Yes.

15 Q. And then we have a graph at
16 the bottom of the page for area managers.

17 Do you see that?

18 A. Yes.

19 Q. Now, is this the bonus plan
20 for you as opposed to the salespeople who
21 worked under you?

22 A. Yes.

23 Q. And explain to me what this
24 graph means about how you were bonused on

1 Fentora sales.

2 A. So if I go to the actual
3 compensation plan itself --

4 Q. That would be the -- that
5 would be the third page of this document?

6 A. Yeah. 759.

7 Q. Okay.

8 A. It says that, "Amrix second
9 quarter bonus was weighted at
10 70 percent."

11 Q. All right. So I see that.
12 But I just want to talk to you about
13 Fentora.

14 A. Okay.

15 Q. At the time. At this time,
16 which would be the 2010 time frame.

17 A. Right.

18 Q. So as a Mid-Atlantic sales
19 manager, how were you bonused with regard
20 to Fentora sales at this time?

21 A. 30 percent of my bonus was
22 on Fentora.

23 Q. Okay. And that would be
24 based on Fentora sales within your

1 Mid-Atlantic region?

2 A. Correct.

3 Q. And the multiplier would be
4 1.486?

5 A. Yes.

6 Q. And that would be 1.486 of
7 what, total sales for that time period in
8 your region?

9 A. Correct. But I can't recall
10 what the multiplier was.

11 Q. Well, if we go back to
12 Page 1, we see that the graph there has a
13 multiplier of 1.486.

14 A. Mm-hmm.

15 Q. And then a dollar figure for
16 Fentora of 2,625. Do you see that?

17 A. Mm-hmm.

18 Q. Does that refresh your
19 recollection as to how you were bonused
20 on Fentora sales?

21 A. Yes.

22 Q. Tell me how it happened.

23 The -- I assume you had a
24 base salary as an area sales manager,

1 correct?

2 A. Yes.

3 Q. Do you recall what your --
4 your highest base salary was as an area
5 sales manager?

6 A. I can't recall the specific
7 amount.

8 Q. Okay. Without giving me a
9 specific amount, can you give me a
10 ballpark?

11 A. Probably \$165,000.

12 Q. Okay. And that would be an
13 annual base salary, correct?

14 A. Yes.

15 Q. And then Fentora sales drove
16 some bonus over and above that, correct?

17 A. Yes, 30 percent.

18 Q. When you say 30 percent, you
19 mean 30 percent of your bonus was tied to
20 Fentora sales?

21 A. Yes.

22 Q. Okay. 70 percent of your
23 bonus was tied to Amrix sales?

24 A. Yes.

1 Q. And that would be sales
2 within your Mid-Atlantic region, correct?
3 A. Yeah, correct.

4 Q. Did you always make a bonus
5 while you were an area sales manager with
6 regard to Fentora sales?

7 A. I can't specifically recall,
8 but no, I don't think I did. I know that
9 the year and a half to two years I was a
10 manager, bonuses were extremely low.

11 Q. Both you and the sales team
12 that worked under you did receive a bonus
13 based on Fentora sales if they met the
14 goals set by the company, correct?

15 A. Yes, we did.

16 (Document marked for
17 identification as Exhibit
18 Teva-Day-9.)

19 BY MR. MADDEN:

20 Q. I'll hand you Exhibit 9.

21 Oh, was there any bonus tied
22 to utilization of speakers that you
23 recall?

24 A. No.

1 Q. All right. Let's go to
2 Exhibit 9. This is a "Dear Doctor"
3 letter put out by Cephalon, in September
4 of 2007.

5 Was this "Dear Doctor"
6 letter ever brought to your attention?

7 A. I can't recall the specific
8 letter, but at this time I was employed
9 and this would be something that I would
10 be informed of.

11 Q. All right. And at this
12 time, you were sales training manager,
13 right?

14 A. Correct.

15 Q. The first paragraph of the
16 "Dear Doctor" letter refers to the
17 company learning of serious adverse
18 events including deaths in patients
19 treated with Fentora. Do you see that?

20 A. Yes.

21 Q. It then says, "These deaths
22 occurred as a result of improper patient
23 selection, e.g., use in opioid
24 non-tolerant patients, improper dosing,

1 and/or improper product substitution."

2 Do you see that?

3 A. Yes.

4 Q. Do you recall when you
5 started with the company that information
6 being brought to your attention?

7 A. Yes.

8 Q. And do you have a
9 recollection of what you were told about
10 the deaths being caused by Fentora at
11 that time?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: I don't know
14 information about the specific
15 deaths.

16 BY MR. MADDEN:

17 Q. Do you know that there were
18 deaths, but you don't know the specifics
19 of it?

20 A. Correct.

21 Q. Do you recall utilizing this
22 "Dear Doctor" letter in your role as a
23 sales training manager?

24 A. This -- the policy was that

1 when this "Dear Doctor" letter would go
2 out to the healthcare professionals, that
3 it would also go out to the field force
4 to inform them of the updates that we see
5 here. So, yes.

6 Q. And how did you utilize the
7 "Dear Doctor" letter, if you recall, with
8 regard to sales training?

9 A. Like what I can recall is
10 that this would be distributed to the
11 sales force for their information and
12 then if there were things within the
13 "Dear Doctor" letter that updated the
14 prescribing information, we would then
15 update the modules and all of the
16 resources to be in compliance.

17 (Document marked for
18 identification as Exhibit
19 Teva-Day-10.)

20 BY MR. MADDEN:

21 Q. I'll hand you Exhibit 10.
22 Exhibit 10 is an e-mail
23 string from October of 2007. And if we
24 look at the bottom of the string there's

1 an e-mail from you dated October 25,
2 2007, to a series of people with the
3 subject, marketing feedback requested.

4 Do you see that?

5 A. Yes.

6 Q. Who are those people to whom
7 you sent this e-mail?

8 A. Those would be field sales
9 representatives.

10 Q. Okay. In any particular
11 region?

12 A. No, it looks to be area
13 trainers which would be nationwide.
14 Usually had an area trainer in different
15 parts of the country. That looks to be
16 this group.

17 Q. So you were the national
18 sales trainer, and then you had area
19 trainers underneath you; is that correct?

20 A. Yes. Well, no, the area
21 trainers reported to the managers. They
22 didn't report directly to me.

23 Q. Okay. You say in -- in your
24 e-mail, "Marketing has asked me to see if

1 I could get some feedback from you on the
2 'Dear Doctor/HCP' letter."

3 Do you see that?

4 A. Yes.

5 Q. And do you understand that
6 to be the letter we just looked at from
7 the 2007 time frame?

8 A. Yes.

9 Q. Why was marketing asking you
10 as a sales training manager to get
11 feedback regarding the "Dear Doctor"
12 letter?

13 MR. ANDRISANI: Objection.

14 THE WITNESS: From what I
15 can recall is that they would want
16 to know if the information
17 contained was understood. A "Dear
18 Doctor" letter goes out like this
19 to the entire healthcare
20 professionals. And the hope is
21 that they receive the information,
22 understand it, and act
23 accordingly.

24 BY MR. MADDEN:

1 Q. Okay. You get a response
2 from Timothy Fortescue on the same day at
3 4:35 p.m., correct?

4 A. Mm-hmm.

5 Q. Yes? Is that a yes?

6 A. Yes.

7 Q. And Mr. Fortescue is one of
8 your area trainers, is that true?

9 A. He's an area trainer.

10 Doesn't report to me.

11 Q. Right.

12 A. Yes.

13 Q. But he is one of the
14 addressees of your earlier e-mail,
15 correct?

16 A. Yes.

17 Q. And Mr. Fortescue responds
18 regarding the "Dear Doctor" letter. His
19 second sentence says, "Some of my key
20 customers' responses have been absolutely
21 detrimental to my territory business.
22 See first bullet."

23 Do you see that?

24 A. Yes.

1 Q. He then goes on to say in
2 that same paragraph, "Generally speaking,
3 my territory has taken a major hit since
4 September, much of which can be
5 attributed to this topic."

6 Do you see that?

7 A. Yes.

8 Q. Okay. And then his first
9 bullet says, "Some key thought leaders in
10 my territory including a national speaker
11 and a regional speaker for Fentora feel
12 that the letter has put them in a bad
13 predicament. They feel as if they will
14 be putting themselves in jeopardy of a
15 lawsuit for prescribing Fentora for some
16 of their patients."

17 Do you see that?

18 A. Yes.

19 Q. So Mr. Fortescue's response
20 to your e-mail about feedback on the
21 "Dear Doctor" letter was that it was
22 hurting sales for him, correct?

23 MR. ANDRISANI: Objection.

24 THE WITNESS: His

1 interpretation, yes.

2 BY MR. MADDEN:

3 Q. And his interpretation was
4 that it was hurting sales because doctors
5 felt that the letter was putting them in
6 legal jeopardy, right?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: I don't know.

9 BY MR. MADDEN:

10 Q. Well, he says, "They feel
11 they will be putting themselves in
12 jeopardy of a lawsuit for prescribing
13 Fentora for some of their patients."

14 Do you see that?

15 A. Yes.

16 Q. That's what he reported to
17 you?

18 A. Yes.

19 Q. Further in that first bullet
20 point he says the -- he says, "One of
21 them took all of his patients off the
22 Fentora and the other is hesitant to
23 start any new patients at this time. The
24 latter informed me that he feels a great

1 deal of disdain towards Cephalon for
2 turning their backs on their doctors by
3 choosing the wording that they used in
4 the letter."

5 Do you see that?

6 A. Yes.

7 Q. So Mr. Fortescue is
8 communicating to you that the letter has
9 decreased sales in his territory because,
10 in his view, the doctors feel that
11 Cephalon turned their back on them,
12 correct?

13 MR. ANDRISANI: Objection.

14 THE WITNESS: I wasn't there
15 for the conversation. But I can
16 read it, yes.

17 BY MR. MADDEN:

18 Q. Yeah, I'm -- and I
19 understand that.

20 A. Okay.

21 Q. I'm only asking what he
22 reported to you.

23 A. In this -- it's in this
24 e-mail, yes.

1 Q. Okay. And do you understand
2 that he's reporting to you that these
3 doctors who are complaining about the
4 "Dear Doctor" letter are doctors who are
5 writing Fentora off-label?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: No.

8 BY MR. MADDEN:

9 Q. Well, it has to be, doesn't
10 it?

11 MR. ANDRISANI: Objection.

12 THE WITNESS: I don't know.

13 I didn't write the e-mail.

14 BY MR. MADDEN:

15 Q. If the doctors that are
16 complaining about the "Dear Doctor"
17 letter are writing Fentora on label,
18 there's no reason to be concerned, is
19 there?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: I don't know.

22 I mean, the purpose of the letter
23 was to highlight that there were
24 unfortunate deaths. So I think

1 that in itself -- I don't know if
2 the deaths were on label or off
3 label.

4 BY MR. MADDEN:

5 Q. Well, the letter also
6 highlights, I believe on the first page,
7 that the indication is for breakthrough
8 cancer pain only, correct?

9 A. Yeah. That would be
10 consistent with every communication that
11 we have.

12 Q. Right. So if a doctor in
13 Mr. Fortescue's territory is writing off
14 label, that is either writing for a
15 patient who is not opioid tolerant or who
16 doesn't have breakthrough cancer pain,
17 then that doctor who receives the "Dear
18 Doctor" letter may have some concern that
19 it would put him or her in a legal
20 predicament, correct?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: I don't know
23 if I can answer on the doctors'
24 behalf. I think based on my

1 recollection of this letter, the
2 letter, and the intent behind the
3 letter was to communicate that
4 there was death -- unfortunately
5 deaths that had occurred, which is
6 very obviously, not coy -- very
7 serious. I think that probably,
8 when you have a death occur, you
9 look at the way you do things.

10 BY MR. MADDEN:

11 Q. Right. But the letter ties
12 the deaths to inappropriate patient
13 selection, such as patients who are not
14 opioid tolerant, correct?

15 A. It says improper patient
16 selection, improper dosing, yes.

17 Q. Right. So --

18 A. I just --

19 Q. Let's go to the fourth
20 bullet point in Mr. Fortescue's response
21 to you.

22 He says, "I've had one
23 instance where a pharmacy that refused to
24 dispense Fentora for a patient because

1 the pharmacy received the letter and
2 found the patient to be an inappropriate
3 choice. They contacted the prescribing
4 physician, and he confirmed that he was
5 aware of the letter and wanted to proceed
6 with ordering the script, and the
7 pharmacy continued to withhold the
8 script."

10 A. Yes.

11 Q. That would indicate that
12 that doctor in that instance was writing
13 Fentora off-label, correct?

14 MR. ANDRISANI: Objection.

18 BY MR. MADDEN:

19 Q. Okay. Right. Well, if a
20 patient doesn't have underlying cancer,
21 would you agree with me that that patient
22 is an inappropriate candidate for
23 Fentora?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: The patient
2 must have cancer, yes.

3 (Document marked for
4 identification as Exhibit
5 Teva-Day-11.)

6 BY MR. MADDEN:

7 Q. Mr. Day, I handed you
8 Exhibit 11. This is an e-mail also from
9 the October 2007 time frame in response
10 to your e-mail of October 25th, asking
11 for feedback on the "Dear Doctor" letter.
12 And this is from Chai Lee.

13 Do you see that?

14 A. Yes.

15 Q. Was he one of the
16 salespeople for Fentora?

17 A. Yes.

18 Q. The feedback that he gives
19 you with regard to response to the "Dear
20 Doctor" letter, Number 2 on his response
21 is, "Some (20 percent) have seen this
22 letter as liability, whereas they are no
23 longer able to write Fentora except in
24 cancer pain."

1 Do you see that?

2 A. Yes.

3 Q. Now, having read that, you
4 would agree with me that you were getting
5 feedback that, at least from Mr. Lee,
6 20 percent of his prescribers found the
7 "Dear Doctor" letter to be a liability
8 because they can no longer write off
9 label, correct?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: That's what
12 the sentence says, yes.

13 BY MR. MADDEN:

14 Q. And that ties into
15 Mr. Fortescue's response, which was that
16 doctors were raising concerns about the
17 letter creating liability?

18 MR. ANDRISANI: Objection.

19 THE WITNESS: Mm-hmm.

20 BY MR. MADDEN:

21 Q. Is that true?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: I don't know
24 if the two relate. If one is of

1 label discussion or a discussion
2 on death, or -- so, I think they
3 are separate letters.

4 BY MR. MADDEN:

5 Q. Fair enough. Mr. Chai is
6 more direct in his response to you?

7 A. Yes.

8 Q. Mr. Chai directly told you
9 that feedback he was getting from doctors
10 with regard to the "Dear Doctor" letter
11 is that they see it as a liability
12 because they're no longer able to write
13 Fentora off-label, correct?

14 MR. ANDRISANI: Objection.

15 Misstates what's on the paper.

16 BY MR. MADDEN:

17 Q. All right. Let's read it
18 directly then.

19 Mr. Chai lists four -- four
20 points that he's getting his feedback
21 from the field with regard to the "Dear
22 Doctor" -- I'm sorry. Mr. Lee lists four
23 points of feedback to you, correct?

24 A. Correct.

1 Q. The second point is that,
2 "Some (20 percent) have seen this letter
3 as liability, whereas they are no longer
4 able to write Fentora except in cancer
5 pain," right?

6 A. Yes.

7 Q. Okay. Which would indicate
8 to you that at least 20 percent of those
9 to whom Mr. Lee spoke, were writing
10 Fentora for something other than cancer
11 pain, correct?

12 A. I don't know. "Some
13 20 percent have seen this letter as a
14 liability" -- yes, could you interpret it
15 that way.

16 Q. Right. And if they are
17 writing Fentora for something other than
18 cancer pain, that would be an off-label
19 prescription, correct?

20 A. Yes.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-12.)

24 BY MR. MADDEN:

1 Q. Mr. Day, I'm handing hand
2 you Exhibit 12. If you can give a copy
3 to your lawyer, please.

4 This is a Fentora brand plan
5 draft for 2011 dated January 5, 2010.

6 Have you seen this document
7 before?

8 A. Not before -- I mean, I
9 probably seen it. I can't recall it.

10 Q. Okay. A brand plan document
11 in the 2010 time frame, is that something
12 that would have been shared with you in
13 your role at that time?

14 A. Yes.

15 Q. And your role in
16 January 2010, remind me, was what?

17 A. January 2010, that would
18 be -- I would have either been in,
19 depending upon the month, in sales
20 training, or I may have been an area
21 manager at the time.

22 Q. All right. Would you have
23 had any role in preparing this document
24 or one like it?

1 A. No.

2 Q. Who would have prepared the
3 brand plan?

4 A. The marketing department,
5 the marketing.

6 Q. And do you recall who headed
7 Fentora marketing in January of 2010?

8 A. I do not.

9 Q. All right. Let's go to Page
10 2 of this exhibit. Executive summary,
11 market overview. And if you look at the
12 second paragraph under market overview,
13 it says, "The current market ROOs
14 accounts for approximately 220,000
15 prescriptions annually down from a peak
16 of 420,000 in 2005 due in part to the
17 introduction of generics and the
18 subsequent reduction in promotional
19 efforts in the class."

20 Do you see that?

21 A. Yes.

22 Q. At this time, was Teva in
23 the generic opioid business to your
24 knowledge?

1 A. I am not aware. I don't
2 know.

3 Q. What was the reason for the
4 subsequent reduction in promotional
5 efforts in the class?

6 MR. ANDRISANI: Objection.

7 BY MR. MADDEN:

8 Q. Is that because Actiq went
9 generic?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: I can't
12 recall. I don't know from this
13 time frame.

14 BY MR. MADDEN:

15 Q. All right. If we look at
16 midway through that same page, it says,
17 "In 2010, Fentora is set to achieve its
18 financial goal of \$175 million,
19 stabilizing total Rx volume through
20 physician retention efforts, despite
21 losses in physician productivity and new
22 patient starts. While a small core group
23 of prescribers, approximately 1,800,
24 primarily pain specialists, account for

1 the majority of Fentora total
2 prescriptions, in 2011 there is the
3 opportunity to drive demand by broadening
4 reach with ROO prescribers, non-ROO
5 prescribing oncologists, and allied
6 health professionals, which in turn will
7 drive the identification of new patients
8 for Fentora."

9 Do you see that?

10 A. Yes.

11 Q. Did you have an
12 understanding about this time period that
13 there were only a core group of about
14 1,800 Fentora prescribers?

15 A. Yes.

16 Q. And did you train or
17 instruct the sales force to concentrate
18 their efforts on that core group?

19 A. No.

20 Q. What did you train the sales
21 force to do with regard to that core
22 group?

23 MR. ANDRISANI: Objection.

24 THE WITNESS: Trained the --

1 we trained the sales force on the
2 product information, the
3 prescribing information.

4 BY MR. MADDEN:

5 Q. Are you -- how did your
6 sales force know who to target?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: So that was
9 outside of sales training. That
10 was sales operations that would
11 set up the targeting methodology.

12 BY MR. MADDEN:

13 Q. Right. When you became a
14 sales manager, how did the sales force
15 underneath you know how to target
16 physicians for Fentora sales?

17 MR. ANDRISANI: Objection.

18 THE WITNESS: We -- we would
19 receive a list of targets from
20 sales operations.

21 BY MR. MADDEN:

22 Q. And do you know how that
23 list was generated?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: I don't know
2 all of the specifics, no.

3 BY MR. MADDEN:

4 Q. Okay. If we look at Page 4
5 of this document, this brand plan. The
6 middle of that page you'll see a heading
7 that says "Market Performance."

8 A. Mm - hmm.

9 Q. It says, "Cephalon launched
10 the first ROO, Actiq, establishing the
11 market and managing to drive a
12 significant growth trajectory in total
13 prescriptions, peaking at 420,000 in
14 2005."

15 Do you see that?

16 A. Yes.

17 Q. Have you seen that
18 information before today?

19 A. No.

20 Q. It then says, "Early success
21 in this arena can be attributed to the
22 promotional focus by Cephalon and the
23 required investment tools to enhance new
24 patient starts and to support

1 reimbursement challenges, and significant
2 corporate support and prioritization."

3 Do you see that?

4 A. Yes.

5 Q. Do you understand that the
6 market created by Cephalon with regard to
7 the first rapid onset opioid Actiq also
8 drove sales for Fentora later?

9 MR. ANDRISANI: Objection.

10 THE WITNESS: No.

11 BY MR. MADDEN:

12 Q. If we go to the next page,
13 Page 5. You see the specialty is listed
14 for Fentora prescribers?

15 A. Yes.

16 Q. Do you see that the
17 percentage of prescribers for oncology
18 are only 4 percent?

19 A. Yes.

20 Q. And that that only
21 represents about 7 percent of Fentora
22 sales?

23 A. Yes.

24 Q. Would you agree with me that

1 that's suspicious?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: No.

4 BY MR. MADDEN:

5 Q. Why?

6 A. At the time oncologists
7 would refer to pain management
8 specialists.

9 Q. So did you not call on
10 oncologists at this time?

11 A. We called on oncologists.

12 Q. Okay. Why would you do that
13 if they weren't writing much Fentora?

14 A. The oncology landscape was
15 evolving at the time. Part of the
16 treatment paradigm or coordinated care in
17 oncology was to start to incorporate pain
18 management into oncologic offices. So we
19 were at a time when they were going --
20 oncologists were going to treat more and
21 more pain and not just refer out.

22 Q. Okay. Page 7 of this
23 document has a brand vision. Middle of
24 the page, 2011 objectives. "The vision

1 (2020 assuming expanded label) for
2 Fentora is to become the gold standard
3 for treating breakthrough pain and for
4 breakthrough pain to be universally
5 recognized."

7 A. Mm - hmm.

8 Q. Is that a yes?

9 A. Yes.

10 Q. Do you understand that that
11 was the goal for Fentora, to have a
12 breakthrough pain indication not limited
13 by cancer?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: I don't -- I
16 don't understand that to be the
17 only goal.

18 BY MR. MADDEN:

19 Q. Okay. Do you understand
20 that to have been a goal of the company?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: Yes.

23 BY MR. MADDEN:

24 O. And did you have some role

¹ or responsibility in reaching that goal,
² other than the module that we discussed
³ earlier?

4 A. No.

5 MR. ANDRISANI: Objection.

6 BY MR. MADDEN:

7 Q. Okay. Page 11 of this
8 document. Under 2011 plan of action,
9 second paragraph, it says, "Although
10 Fentora promotion has been limited over
11 the past two years, it has been
12 demonstrated that the brand is highly
13 sensitive to promotion across a range of
14 tactics."

15 Do you see that?

16 A. Yes.

17 Q. Do you have an understanding
18 as to why Fentora promotion was limited
19 over that two-year period?

20 A. No.

21 Q. Would you agree that the
22 Fentora brand was highly sensitive to
23 promotion?

24 MR. ANDRISANI: Objection.

1 THE WITNESS: I -- no.

2 BY MR. MADDEN:

3 Q. Okay.

4 A. I didn't write that, so I
5 don't know what the specific words --

6 Q. You don't understand what
7 that means?

8 A. Well, I know what it means,
9 but I don't know if I would necessarily
10 agree with it.

11 Q. Okay.

12 A. Yeah.

13 Q. The second sentence says,
14 "Representative-driven detailing
15 activities, messaging, vouchers, and
16 debit cards, and speaker programs, have
17 demonstrated a significant impact,
18 driving 29 percent of Fentora sales
19 historically."

20 Do you see that?

21 A. Yes.

22 Q. Would that indicate to you
23 that at least according to the author of
24 this document, 29 percent of Fentora

1 sales were attributable to detailing?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: It could but
4 that also wouldn't indicate that
5 it was highly sensitive to me.

6 BY MR. MADDEN:

7 Q. All right. It then says,
8 "The remaining 71 percent of sales
9 reflect carryover as a result of
10 physician loyalty and past promotion."

11 Do you see that?

12 A. Yes.

13 Q. Would that indicate to you
14 that the 71 percent of Fentora sales were
15 a result of market creation done through
16 the promotion of Actiq?

17 MR. ANDRISANI: Objection.

18 THE WITNESS: I don't know.

19 BY MR. MADDEN:

20 Q. Could be that, right?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: I don't know.

23 BY MR. MADDEN:

24 Q. Okay. Tell me what you

1 believe the 71 percent sales carryover as
2 a result of physician loyalty and past
3 promotion goes to?

4 MR. ANDRISANI: Objection.

5 THE WITNESS: Well, Fentora
6 launched in 2006, and this is
7 2011.

8 BY MR. MADDEN:

9 Q. Okay.

10 A. I wasn't part of the
11 organization with Actiq. And Actiq was
12 prior to 2006, so I'm not sure what is
13 meant by carryover. But there is five
14 years between the launch of Fentora to
15 this sentence. So that would --

16 Q. So you think that physician
17 loyalty and past promotion carryover
18 could be as a result of Fentora
19 promotion?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: I don't know
22 what the loyalty was based on or
23 what past promotion is without
24 time frames.

1 BY MR. MADDEN:

2 Q. What number is that, 12?

3 A. Yeah.

4 (Document marked for
5 identification as Exhibit
6 Teva-Day-13.)

7 BY MR. MADDEN:

8 Q. All right. Mr. Day,
9 Exhibit 13, this is an e-mail regarding a
10 teleconference from November 25, 2008.
11 You were one of the attendees listed. Do
12 you see that?

13 A. Yes.

14 Q. And then there is an
15 attachment which is called Pre-Module
16 Introduction to Pain. Do you see this?

17 A. Yes.

18 Q. Is this one of the modules
19 that we were discussing that you used as
20 a sales training guide?

21 A. Yes.

22 Q. And do you recognize this
23 module as one that would have been
24 administered to the sales force?

1 A. I'm not sure if this was the
2 final approved version. But for internal
3 use, it looks to be, yes, on the -- a
4 version that would be introduced, yes.

5 Q. What were the purposes of
6 these modules such as we've marked as
7 Exhibit 13?

8 A. To train the field force
9 on -- I mean this one in particular was
10 to train the field force on pain;
11 different types of pain, like, you know,
12 what is pain, the evaluation of pain.
13 Basically, how pain is managed.

14 Q. All right. And so the
15 Fentora sales force, which was selling a
16 product used to address breakthrough
17 cancer pain, would take a module such as
18 this as part of their training for
19 detailing doctors, correct?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: It wouldn't be
22 for detailing doctors. It would
23 be for internal education, for
24 them to learn about the entire

1 pain landscape.

2 So for example, with
3 Fentora, you have to be opioid
4 tolerant. So there's an
5 underlying opioid that needs to be
6 taken, right, around the clock,
7 and they need to be tolerant to
8 that for a week or longer.

9 So that is a part of the
10 treatment paradigm and how patient
11 management is treating that we
12 would train them on.

13 BY MR. MADDEN:

14 Q. Right. That opioid
15 tolerance though has to be in a patient
16 with cancer, correct?

17 A. Correct, yeah.

18 Q. But the sales force that's
19 taking this module, their job essentially
20 is to call on doctors with regard to
21 Fentora, correct?

22 A. Yes.

23 Q. They don't have a job
24 description that's broader than that, do

1 they?

2 MR. ANDRISANI: Objection.

9 BY MR. MADDEN:

10 Q. And you were in charge, at
11 least for a period of time, in training
12 those representatives who were calling on
13 doctors, right?

14 A. Yes.

15 Q. And part of that training
16 included these modules, right?

17 A. Yes.

18 Q. Okay. If we go to -- well,
19 let's go back a minute here. How is the
20 module administered to the sales force?

21 A. The module is -- this is
22 taken during initial sales, like when
23 you're hired or it's e-mailed to you and
24 then you review it and take a

1 certification exam.

2 Q. And is there a test that
3 goes along with the module?

4 A. Yes.

5 Q. Is that taken online or on
6 paper?

7 A. Online.

8 Q. And I take it the sales
9 force member has to pass the test to be
10 able to be out in the field dealing with
11 doctors, right?

12 A. Correct.

13 Q. Okay. Let's go to Page 45
14 of this module. And the numbers I'm
15 using are in that black box. Do you see
16 that?

17 A. Yes.

18 Q. This paragraph, first full
19 paragraph on Page 45 says, "Healthcare
20 professionals also have concerns and
21 fears about opioid side effects and fears
22 about addiction. The actual likelihood
23 of becoming addicted to opioids when used
24 under medical supervision varies by

1 patient population. Factors that
2 increase the likelihood of developing an
3 addiction include preexisting addictive
4 disorders, untreated psychopathology, or
5 a family history of addictive disease."

6 It then says, "However, in
7 patients without personal or family
8 history of substance abuse, addiction
9 resulting from exposure to opioid therapy
10 is uncommon."

11 Do you see that?

12 A. Yes.

13 Q. And your sales force was
14 trained with regard to that paragraph in
15 this module, correct?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: As that
18 sentence was included in the
19 training module, yes, and they
20 would have reviewed that.

21 BY MR. MADDEN:

22 Q. Okay. The sentence that
23 says, "However, in patients without
24 personal or family history of substance

1 abuse, addiction resulting from exposure
2 to opioid therapy is uncommon," do you
3 see that sentence?

4 A. Yes.

5 Q. Is that true?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: I don't know.

8 It's cited from APA. So it was
9 taken from that article.

10 BY MR. MADDEN:

11 Q. Do you have information that
12 today would indicate to you that is an
13 untrue statement?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: I don't know
16 if it's true or if it's not true.

17 "Patients without personal or
18 family history of substance
19 abuse" -- "resulting from exposure
20 to opioid therapy is uncommon." I
21 mean, I didn't write the article.
22 I don't know personally or have
23 the dataset to say if you're a
24 person or a family without a

1 history, that you are therefore
2 going to be not at risk for abuse.
3 I don't know. I don't have those
4 data or whoever wrote this
5 article.

6 BY MR. MADDEN:

7 Q. So you were the director in
8 charge of the abuse-deterrent formulation
9 for an opioid, correct?

10 A. Mm-hmm.

11 Q. Is that true?

12 A. Yes.

13 Q. And part of the reason that
14 the company, Teva, was developing that
15 abuse-deterrent formulation was to deal
16 with the risk of addiction, correct?

17 A. Abuse.

18 Q. The risk of abuse, correct?

19 A. Yes.

20 Q. And as a director, you don't
21 know one way or the other whether that
22 sentence we've just read is untrue?

23 MR. ANDRISANI: Objection.

24 THE WITNESS: No, I don't

1 know if it's true or untrue from
2 2005. And I don't know if it's
3 still true.

4 BY MR. MADDEN:

5 Q. Further down on Page 45, in
6 this module, it says, "Another
7 significant barrier to appropriate opioid
8 pain management is concern over the legal
9 liabilities associated with controlled
10 substances. The Federal Controlled
11 Substances Act categorizes drugs with
12 potential for abuse and controls their
13 manufacture and distribution."

14 Do you see that?

15 A. Yes.

16 Q. Do you remember earlier we
17 talked about a module addressing the
18 Controlled Substances Act?

19 A. Yes.

20 Q. Is this the module about
21 which we were speaking?

22 A. This is a sentence. I
23 believe there is information also
24 included in the risk map module.

1 Q. Is there anything in this
2 module or the risk module that instructs
3 the sales representative to report
4 suspicious prescribing activities?

5 MR. ANDRISANI: Objection.

6 BY MR. MADDEN:

7 Q. To the DEA?

8 A. The sales representative to
9 report to the DEA?

10 Q. Correct.

11 A. Not to my knowledge.

12 Q. Okay. Page 48 and 49.

13 Let's go to Page 49. First paragraph
14 says, "Pain appears to reduce the
15 euphoric effects of opioids, so people
16 taking opioids to manage their pain may
17 be at a lower risk for addiction."

18 Do you see that?

19 A. Yes.

20 Q. And that, again, is
21 something that was in this training
22 module for the sales force, correct?

23 A. Yes.

24 Q. Is that a true statement, to

1 your knowledge?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: I don't know
4 if it's a true statement. It's a
5 statement from the source. But I
6 think -- I mean, opioids are
7 addictive. Like, we know that.

8 It's an indication in the
9 important safety information,
10 right, bolded.

11 BY MR. MADDEN:

12 Q. But I guess as someone who
13 has been involved in the opioid world
14 from at least 2007 in the sales and
15 promotion of fentanyl, as someone with
16 that experience, do you believe that
17 someone who is in pain is less likely to
18 become addicted to opioids?

19 MR. ANDRISANI: Objection.

20 THE WITNESS: I don't treat
21 patients, so -- but -- can you
22 rephrase the question?

23 BY MR. MADDEN:

24 Q. Let's just look at the

1 sentence again. In taking into account
2 your experience from 2007 to the present
3 with opioids, it says, "Pain appears to
4 reduce the euphoric effects of opioids,
5 so people taking opioids to manage their
6 pain may be at a lower risk for
7 addiction," is what the statement is in
8 the module from the company, correct?

9 A. Correct.

10 Q. And based on your experience
11 since 2007 to the present with marketing
12 and selling opioids, is that a true
13 statement?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: I'm not --
16 yeah, I'm not sure who is at lower
17 risk. I think everyone is at
18 risk. So the resources are citing
19 different behaviors or personality
20 types. So I'm not sure. Everyone
21 is at risk.

22 BY MR. MADDEN:

23 Q. It then goes on to say,
24 "Certain behaviors are sometimes mistaken

1 for addiction. If patients receive
2 inadequate pain relief, they may exhibit
3 drug-seeking behaviors. This is called
4 pseudoaddiction. When these patients
5 receive adequate pain management they no
6 longer exhibit the same behaviors.
7 Patients in pain do not usually become
8 addicted to opioids."

9 Are those true statements?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: It's a -- it's
12 a generalization. Patients can or
13 can not become addicted to
14 opioids.

15 BY MR. MADDEN:

16 Q. So if a patient, is on an
17 opioid that is not at a high enough dose
18 and exhibits drug-seeking behavior, would
19 you agree to me that that is -- would you
20 agree with this language, that that is a
21 pseudoaddiction?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: I mean, I'm
24 not a doctor. I'm not a

1 prescriber. So I don't know if
2 that fits the strict definition of
3 pseudoaddiction. I'm not -- I'm
4 not really as familiar with the
5 term pseudoaddiction either.

6 BY MR. MADDEN:

7 Q. But you were the sales
8 training manager, right?

9 A. Yes. Yes.

10 Q. And you were the one who
11 administered modules such as this one to
12 the sales force, right?

13 MR. ANDRISANI: Objection.

14 Asked and answered.

15 THE WITNESS: Yes.

16 BY MR. MADDEN:

17 Q. Okay. So what you're
18 telling me is that as a sales training
19 manager who had this module that
20 describes pseudoaddiction, you really
21 don't understand what that means?

22 MR. ANDRISANI: Objection.

23 Misstates the testimony.

24 THE WITNESS: No, I mean, we

1 know what pseudoaddiction means
2 based on the reference here. But
3 there are other factors that
4 doctors may consider that I'm not
5 aware of.

6 BY MR. MADDEN:

7 Q. All right. How about just
8 that last sentence, "Patients in pain do
9 not usually become addicted to opioids."

10 As you sit here today,
11 knowing what you know --

12 A. Yeah.

13 Q. -- is that a true statement?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: I think it
16 depends on the patient, the
17 person.

18 BY MR. MADDEN:

19 Q. So patients in pain can
20 become addicted to opioids. You would
21 agree with that?

22 A. Yes, I would.

23 Q. Was part of this training
24 manual that deals with pseudoaddiction

1 and whether patients in pain can become
2 addicted to opioids, was part of this to
3 train the sales force to overcome
4 objections from doctors?

5 MR. ANDRISANI: Objection.

6 THE WITNESS: No.

7 BY MR. MADDEN:

8 Q. What was the purpose then?

9 A. It was background
10 information on the management of pain.

11 MR. ANDRISANI: Brian, are
12 you on the same topic?

13 MR. MADDEN: We can take a
14 break.

15 THE VIDEOGRAPHER: Going off
16 the record. The time is 12:05.

17 (Short break.)

18 THE VIDEOGRAPHER: We are
19 going back on record beginning
20 Media File Number 3. The time is
21 12:20.

22 BY MR. MADDEN:

23 Q. Mr. Day, I handed you
24 Exhibit 14.

1 A. Thank you.

2 (Document marked for
3 identification as Exhibit
4 Teva-Day-14.)

5 THE WITNESS: Do you have a
6 sticker?

7 BY MR. MADDEN:

8 Q. Exhibit 14 is an e-mail
9 dated August 2, 2007, from Elizabeth
10 Amend to you and Danielle Leap dated
11 August 2, 2007. Who was Ms. Leap?

12 A. She was my manager.

13 Q. And Ms. Amend?

14 A. She was a consultant.

15 Q. We talked earlier about
16 modules being created by third-party
17 consultants for your review, correct?

18 A. Yes.

19 Q. And was Ms. Amend such a
20 consult?

21 A. Yes.

22 Q. Okay. So in August 2007,
23 which, what was that, about a month after
24 you started with the company?

1 A. Yes.

2 Q. You get this e-mail from
3 Ms. Amend that attaches a no cancer
4 version of the Fentora product
5 backgrounder, correct?

6 A. Yes.

7 Q. And we had the attachment
8 which is Module 2, Fentora learning
9 system. And this was a noncancer
10 version, correct?

11 A. Yes.

12 Q. Did you review this document
13 when you received it?

14 A. Yes.

15 Q. Was this noncancer
16 backgrounder ever administered as a
17 module to the sales force?

18 A. No.

19 Q. What feedback, if any, do
20 you recall giving on this noncancer
21 backgrounder for Fentora?

22 A. I -- I don't recall getting
23 feedback.

24 Q. Why was a noncancer

1 backgrounder for Fentora created in
2 August of '07, if Fentora didn't have a
3 indication for noncancer pain?

4 A. As we talked about earlier,
5 it was, I believe -- so this is when I
6 came into the organization, it was filed
7 with the FDA. So this was in
8 anticipation of it potentially being
9 approved.

10 Q. So with the supplemental new
11 drug application, this backgrounder would
12 have been provided to the FDA?

13 A. Had it been approved.

14 Q. Handing you Exhibit 15.
15 (Document marked for
16 identification as Exhibit
17 Teva-Day-15.)

18 BY MR. MADDEN:

19 Q. Exhibit 15 appears to be a
20 PowerPoint or slides --

21 MR. ANDRISANI: Do you have
22 an extra one?

23 MR. MADDEN: I gave them to
24 you, but...

1 MR. ANDRISANI: Is there
2 two?

3 THE WITNESS: Sorry.

4 MR. MADDEN: And, counsel,
5 I'm happy to hand them to you
6 first.

7 MR. ANDRISANI: Absolutely
8 fine.

9 THE WITNESS: That's the
10 first one I dropped.

11 BY MR. MADDEN:

12 Q. This sales training and
13 development slide dated July 2008. Do
14 you recognize this?

15 A. Now that it's here, yes.

16 Q. Okay. Did you have any role
17 with regard to preparing this as sales
18 training manager?

19 A. I'm not sure if I would have
20 specifically created this, but it may
21 have been me or Danielle or somebody in
22 the training department, but it does look
23 familiar, yes.

24 Q. All right. If we go to

1 Page 2 -- do you have page numbers on
2 there?

3 A. I do.

4 Q. All right. If we go to
5 Page 2 under background, it says, "An
6 initial sales training program was
7 conducted in Malvern, Pennsylvania, from
8 July 14 to 24, 2008."

9 Do you see that?

10 A. Yes.

11 Q. What was the purpose of that
12 program to your recollection?

13 A. Initial sales training
14 programs were put together to train new
15 hires.

16 Q. Okay. Were they usually a
17 ten-day ordeal?

18 A. Yes.

19 Q. And was this done annually?

20 A. They were done on an
21 as-needed basis. So if a representative
22 would leave and go to another company, we
23 would put together a class when that
24 person was backfilled or rehired.

1 Q. I see. What role did you
2 play in that ten-day sales training
3 program to your recollection?

4 A. In 2008 I'm not sure if I
5 would have played a lead role or
6 supporting role. But sales training
7 would be responsible for training the new
8 hires during that ten-day class.

9 Q. Would the modules be
10 administered during that ten-day period?

11 A. They would have completed
12 the modules and the certification exams
13 prior to attending.

14 Q. Okay. So what then would
15 the sales reps do during that ten-day
16 period at a sales training program such
17 as this?

18 A. So essentially it was
19 product training and all of the modules
20 were taking -- we would go through
21 different courses on the prescribing
22 information. The prescribing information
23 for Fentora was quite lengthy, so there
24 was also a medication guide that

1 accompanied that, and those two documents
2 are what we would focus the training on
3 to ensure that there was proper retention
4 of the information.

5 Q. Would you invite outside
6 speakers to these training programs?

7 A. Yes.

8 Q. What type of outside
9 speakers?

10 A. Usually the outside speakers
11 would be internal personnel, like
12 compliance, legal, our medical department
13 to discuss some of the package insert,
14 and occasionally like somebody from sales
15 or marketing.

16 Q. So those would be internal
17 company speakers, correct?

18 A. Correct.

19 Q. From the different
20 departments in the company, right?

21 A. Correct.

22 Q. What about somebody from
23 outside the company who would be brought
24 in to speak to the sales force for this

1 training, would you ever bring in someone
2 from outside the company?

3 A. I'm not sure if we did for
4 this specific training. From time to
5 time we would bring in outside speakers.

6 Q. What type of outside
7 speakers would you bring in?

8 A. Like a healthcare
9 professional or a doctor.

10 Q. And would that healthcare
11 professional or doctor be a -- someone
12 from the speakers bureau typically?

13 A. Yes.

14 Q. And the speakers bureau are
15 doctors who acted as key opinion leaders,
16 is that true?

17 A. Yes.

18 Q. And those doctors would
19 speak to other doctors about Fentora and
20 be compensated for it, true?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: Yes.

23 BY MR. MADDEN:

24 Q. And that would be arranged

1 by the sales force, correct?

2 A. Correct, as we talked about,
3 yes.

4 Q. All right. And Steven Simon
5 is one of those speakers in the speakers
6 bureau for Cephalon/Teva with regard to
7 its opioid products, correct?

8 MR. ANDRISANI: Objection.

9 THE WITNESS: He was.

10 BY MR. MADDEN:

11 Q. All right. What
12 interactions have you had with Dr. Steven
13 Simon?

14 A. I have -- during my time as
15 a product manager and marketer, I would
16 attend the speakers bureau training, and
17 during that training, Dr. Simon would be
18 one of the speakers that would attend
19 that. And him amongst the others.

20 Q. Dr. Simon's from my neck of
21 the woods, Kansas City. You know that,
22 right?

23 A. Yes.

24 Q. Okay. Would Dr. Simon ever

1 be brought to the Mid-Atlantic region
2 that you oversaw to speak to doctors
3 about Fentora?

4 A. When I was a Mid-Atlantic
5 manager I can't recall specifically
6 bringing Dr. Simon, but yes, he could
7 have been. If a representative had
8 requested Dr. Simon or another doctor
9 across the country, yes, they could have
10 gone to the Mid-Atlantic.

11 Q. Why would a representative,
12 let's say in the Mid-Atlantic region,
13 request a speaker from some other part of
14 the country to come speak to a doctor in
15 the Mid-Atlantic region?

16 A. In the speakers bureau, they
17 had different tiers, based on your --
18 your knowledge, if you were well
19 published, if you spoke. So he would be
20 an example. Or there would be doctors
21 that were Tier 1 or Tier 2 that may have
22 more knowledge and may have more
23 publications, that they would bring in
24 instead of just a local speaker.

1 Q. So let's go to Page 12 of
2 your PowerPoint here. For this ten-day
3 conference in July of '08 for the sales
4 force training, you see a slide there
5 that says, "Dr. Steven Simon"?

6 A. Yes.

7 Q. And would that indicate to
8 you that Dr. Simon was brought in to
9 speak during this ten-day training
10 program?

11 A. Yes.

12 Q. Would you have arranged for
13 Dr. Simon to come speak to the sales
14 force for this program?

15 A. Sales training would have
16 arranged, yes.

17 Q. Okay. Did you personally do
18 it?

19 A. I can't recall if I
20 personally contacted him for this
21 engagement. But it would be me -- it
22 could have been me, or somebody in the
23 sales training department, yes.

24 Q. Okay. Do you have an

1 understanding as to why the sales
2 training department would have brought
3 Dr. Simon from Kansas City in for this
4 ten-day training program?

5 A. To -- yes, to train on
6 Fentora.

7 Q. Right. But why, why bring
8 somebody from Kansas City as opposed to
9 somebody from Pittsburgh or Philly?

10 A. I don't know around the
11 specific time. There could be various
12 different reasons. Like somebody local
13 may not be available. Or, you know, he
14 could have been, or -- at this time was
15 like a higher tier physician that had
16 more knowledge about pain management. So
17 there could have been various factors
18 into why he was selected.

19 I think across the different
20 sales training programs, there was almost
21 always a different doctor. So it was
22 kind of multifactorial.

23 Q. Do you have an understanding
24 that Dr. Simon after July of 2008 was a

1 paid speaker for Fentora?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: After 2008 was
4 a paid speaker.

5 BY MR. MADDEN:

6 Q. Right.

7 A. Yes, I -- yes, I think he
8 was.

9 Q. Okay. Before bring --
10 before either you or whoever in your
11 department brought Dr. Simon in for this
12 training program, what background
13 information did you have about Dr. Simon?

14 A. So when a speaker is
15 identified on the bureau, it goes through
16 a review process, which consists of
17 legal, compliance, and medical. And they
18 look at like a doctor's, you know,
19 practice, history, publications, things
20 like that.

21 Q. So there is some background
22 check done on the doctor --

23 A. Yes.

24 Q. -- before he comes in to

1 train the reps, right?

2 A. Yes, yes.

3 Q. And you -- and it's your
4 understanding that background check is
5 done by legal, medical, and who else?

6 A. Compliance.

7 Q. Compliance?

8 A. Yes.

9 Q. Do you know what that
10 background check entails?

11 A. I don't know the specifics
12 behind it, no.

13 Q. Did you do any background
14 check on Dr. Simon or did anyone from
15 your department do a background check on
16 him before bringing him in to train the
17 sales force?

18 A. The speakers bureau is
19 looked at twice a year and reevaluated
20 and re-credentialed. That's done by the
21 compliance and legal department, not by
22 me.

23 Q. Is Dr. Simon one of the top
24 speakers for Fentora?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: I think he is
3 a speaker for Fentora. I don't
4 know specifically how much he was
5 utilized in comparison to other
6 speakers. He's a pain
7 management -- he's a nationally
8 known pain management specialist.

9 BY MR. MADDEN:

10 Q. And because of that national
11 recognition as a pain management
12 specialist, he was brought in for this
13 ten-day session to train sales reps,
14 right?

15 A. That may have been one of
16 the reasons. I'm not sure if it was the
17 only one. Like I said before, it could
18 be geographic. Other doctors might not
19 have been available. Different doctors
20 were selected at different times.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-16.)

24 BY MR. MADDEN:

1 Q. I'll hand you Exhibit 16.

2 Were you aware that Dr. Simon was a
3 pharmacist before he was a doctor?

4 A. We may have discussed it.

5 It doesn't -- now that -- yeah.

6 Q. Now, seeing this document --

7 A. Yes.

8 Q. -- are you aware --

9 A. Yes.

10 Q. -- that Dr. Simon was a
11 pharmacist before he was a doctor?

12 A. Yes.

13 Q. And if you turn to Page 3 of
14 this document. Were you aware that he
15 was indicted in 1974 for illegal
16 distribution of a controlled substance
17 when he was a pharmacist?

18 A. I was not.

19 Q. Is this news to you?

20 A. Yes.

21 Q. Is it news to you that one
22 of your top Fentora speakers was indicted
23 for controlled substance violation in
24 1974?

1 A. Yes.

2 Q. Does it surprise you?

3 MR. ANDRISANI: Objection.

4 THE WITNESS: It's news to
5 me. I didn't know this.

6 BY MR. MADDEN:

7 Q. Okay. But in any event, the
8 Steve Simon that was brought out in --
9 for the ten-day training session, you now
10 know was indicted as a pharmacist for
11 controlled substance violations, correct?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: I now know, in
14 1974, yes.

15 BY MR. MADDEN:

16 Q. And if you look at the last
17 page of that document, do you see a
18 finding of guilty?

19 A. Where would I see that?

20 Q. About a third of the way
21 down the page there, being a finding of
22 guilty?

23 A. Yes, I do see that.

24 Q. And that was in the United

1 States District Court for the Western
2 District of Missouri, correct?

3 MR. ANDRISANI: Objection.

4 THE WITNESS: That's --

5 that's what it says.

6 BY MR. MADDEN:

7 Q. And you know from
8 interacting with Dr. Simon that that's
9 where he's from, right?

10 A. Yes.

11 (Document marked for
12 identification as Exhibit
13 Teva-Day-17.)

14 BY MR. MADDEN:

15 Q. All right, sir. Exhibit 17.

16 A. Yep.

17 Q. This is another sales
18 training and development slide, "2010
19 Fentora training?"

20 Do you see that?

21 A. Yes.

22 Q. Did you create this or
23 assist in its creation?

24 A. Yes. May have either

1 created or assisted in the creation, yes.

2 Q. Okay. Page 3 of this
3 document has a needs assessment box,
4 field based. And the second bullet point
5 says, "I do not have any cancer
6 patients." And that's in quotes. And it
7 says, "NSMM, post-NSMM." What does NSMM
8 mean?

9 A. National sales meeting -- I
10 don't know what the other M stands for.
11 I'm sorry.

12 Q. So if -- can you tell from
13 this slide that the sales reps were
14 trained with regard to doctors who said,
15 "I do not have any cancer patients"?

16 MR. ANDRISANI: Objection.

17 BY MR. MADDEN:

18 Q. That's a bad question. Let
19 me ask a better question.

20 What do you recollect from
21 the sales training and development
22 training from 2010 as to what the sales
23 reps were trained to do when a doctor
24 said, "I do not have any cancer

1 patients"?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: I mean, the
4 sales -- I can't recall from the
5 specific -- this is a needs
6 assessment. The sales
7 representatives were always
8 trained to promote on label,
9 patients with cancer that were
10 opioid tolerant. So if this was
11 an objection, that wouldn't be a
12 doctor that we would call on.

13 BY MR. MADDEN:

14 Q. Okay. What is the Voices
15 and Faces campaign? Do you remember
16 that?

17 A. I believe, so I wasn't in
18 marketing at the time. But that was --
19 actually, I don't know. I don't want to
20 speculate.

21 Q. Okay. Let's go to Page 4 of
22 this slide then, this slide presentation.
23 And you see it has, "Quarter 1 basics,
24 plus one."

1 The third entry in that box
2 says, "CVA, what's missing?"

5 A. I think that was a game that
6 you would play with the CVA, that goes
7 back to the blended learning in using
8 game-ification for learning.

9 Q. Some kind of role playing
10 for the sales force, correct?

11 A. Yeah, like -- I can't really
12 describe it. Maybe a board where there
13 were different, you know, facts that they
14 had to recall.

15 Q. Okay. And then let's go to,
16 "Assessment and treatment case studies
17 workshop." There's a bullet entry,
18 "Marketing Voices and Faces campaign,
19 selling strategy." And then a second
20 bullet that says, "I have no cancer
21 patients."

22 A. Mm - hmm.

23 Q. Do you have an understanding
24 as to what that means?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: Without the
3 supporting documentation, I
4 believe Voices and Faces was about
5 patients, and the "I have no
6 cancer," as we said before, was,
7 you know, always stating the
8 indication and finding the
9 appropriate patient, with regard
10 to that.

11 BY MR. MADDEN:

12 Q. Do you recall an iPad
13 strategy campaign?

14 A. Yes.

15 Q. What was your role with
16 regard to the iPad strategy campaign?

17 A. I was a member of the iPad
18 cross-functional team.

19 Q. Okay. What did you do as a
20 member of the iPad cross-functional team?

21 A. Sat in a lot of meetings to
22 review. It was a time when the
23 organization was incorporating the iPads
24 into the sales force as opposed to like

1 hardcopy and paper. So I sat in meetings
2 to discuss, like, the functionality of it
3 and how it was going to be integrated.

4 Q. Okay. Do you recognize the
5 name Dr. Portenoy?

6 A. Yes.

7 Q. Who is Dr. Portenoy?

8 A. He was a primary
9 investigator on the pivotal study that
10 led to the indication for Fentora that
11 was in the prescribing information.

12 Q. For Fentora?

13 A. Yes.

14 Q. Do you recall that
15 Dr. Portenoy also wrote papers and/or
16 posters that discussed use of Fentora for
17 noncancer breakthrough pain?

18 A. No, I don't recall a
19 specific paper by him.

20 Q. Okay. What about posters?

21 A. No.

22 (Document marked for
23 identification as Exhibit
24 Teva-Day-18.)

1 BY MR. MADDEN:

2 Q. I'll hand you Exhibit 18.

3 Exhibit 18 has your name on the front of
4 it. It's called "iPad Strategy Meeting,
5 Matthew Day, April 19, 2012."

6 A. Yep.

7 Q. That was in my hometown,
8 Kansas City, right?

9 A. Yes.

10 Q. What were you doing out in
11 Kansas City for this?

12 A. Teva had an office in Kansas
13 City --

14 Q. Overland --

15 A. -- in Overland Park.

16 Q. Okay.

17 A. Yeah.

18 Q. And did this meeting involve
19 sales reps from around the country?

20 A. This may have just been
21 managers. I'm not sure if it was sales
22 reps and managers or just managers.

23 Q. In 2012, were you product
24 manager for Fentora?

1 A. Yes.

2 Q. Okay. If you look at Page
3 10 of this document -- well, I take that
4 back. Let's go to Page 4.

5 You've got 2012 strategies
6 and supporting iPad tactics.

7 Do you see that?

8 A. Yes.

9 Q. Did you draft or have a role
10 in drafting this document?

11 A. Yes.

12 Q. This is your document?

13 A. Yes. This is one I would
14 have drafted with the team, yes.

15 Q. Okay. Key strategic
16 imperatives on Page 4.

17 A. Mm-hmm.

18 Q. "Maintain existing
19 prescriber base and develop new
20 opportunities to expand prescriber base."

21 Do you see that?

22 A. Yes.

23 Q. Then it says, "New
24 comprehensive DSA."

1 A. Yes.

2 Q. What's DSA?

3 A. Digital sales aid. Earlier
4 we talked about the core visual aid. The
5 core visual aid was in paper. Digital
6 sales aid is on the iPad.

7 Q. Got it. Okay. Page 10 of
8 this document has a slide that says,
9 "Fentora DSA and interactive experience.
10 Maintain existing prescriber base and
11 develop new opportunities to expand
12 prescriber base."

13 Do you see that?

14 A. Yes.

15 Q. And then you have a cut-out
16 that says, "The importance of Portenoy in
17 practice."

18 A. Mm-hmm.

19 Q. Yes? Is that a yes?

20 A. Yes.

21 Q. What was the importance to
22 you of using that cut-out?

23 A. The data that you see to the
24 right is taken from the publication on

1 the left.

2 Q. From the Portenoy
3 publication?

4 A. Yes.

5 Q. Would the sales force use
6 the Portenoy data on sales calls on their
7 iPad with doctors?

8 A. I don't believe the Portenoy
9 reprint was available on the iPad. It
10 may have been. But they would use the
11 digital sales aid more frequently.

12 Q. The digital sales aid was
13 based on Portenoy data?

14 A. Yes.

15 Q. So -- and that data would be
16 available on the iPad for detailing
17 doctors?

18 A. Yes. In the images that you
19 see here to the --

20 Q. Got it.

21 A. -- to the right.

22 Q. But one of the images ties
23 to, it looks like a Portenoy paper. It's
24 too small for me to see, but would --

1 would the paper be on the iPad for
2 detailing doctors?

3 A. I can't recall if the paper
4 was on the iPad or not. It may have
5 been. But the primary point of this
6 slide was to show that that's where the
7 data came from that built the digital
8 sales aid.

9 Q. All right.

10 (Document marked for
11 identification as Exhibit
12 Teva-Day-19.)

13 BY MR. MADDEN:

14 Q. I'll hand you Exhibit 19.

15 A. Thank you.

16 Q. This is a document that has
17 a cover page that says Imagine The
18 Possibilities. Have you seen this
19 document before today?

20 A. I'm sure that I have. I
21 don't recall it, but...

22 Q. Okay. Let me point your
23 attention to Page 3. And it's --
24 indicates that fall managers meeting,

1 this may have been prepared for.

2 Do you see that?

3 A. Yes, I do.

4 Q. Would you have been at this
5 fall managers meeting?

6 A. Yes, I think I was here.

7 Q. Okay. If we go to Page 4,
8 you'll see that at the meeting 2013
9 performance highlights were discussed.

10 A. Mm-hmm.

11 Q. So would that put us in the
12 fall of 2013 or the fall of 2014, or can
13 you tell?

14 A. This would put us in '13 I
15 believe.

16 Q. Okay. So year-to-date
17 performance results for 2013 would have
18 been discussed at this fall meeting. Is
19 that your recollection?

20 A. That is, yes.

21 Q. And at the time you were the
22 manager of -- were you Mid-Atlantic at
23 that time or were you the Fentora product
24 manager?

1 A. I was product manager. I
2 was in marketing.

3 Q. Got it. Okay. Page --
4 Page 6 of this document.

5 A. Mm-hmm.

6 Q. You see Fentora and then
7 what looks to be a list of competitors in
8 the TIRF market.

9 A. Yes.

10 Q. Next to Fentora it says,
11 "Market leader with largest prescriber
12 base."

13 Do you see that?

14 A. Yes.

15 Q. Then it says, "About
16 27 percent of TIRF"?

17 A. Yes.

18 Q. What do you understand that
19 to mean?

20 A. The TIRF class.

21 Q. The TIRF class was fentanyl
22 products such as Fentora and Subsys,
23 right?

24 A. Yeah, they are all

1 fentanyl-based products essentially in
2 different delivery systems.

3 Q. Got it. And at least at the
4 time of this fall meeting, Fentora was
5 the market leader in that class, correct?

6 A. Yes.

7 Q. And it had 27 percent of
8 that market?

9 A. Yes.

10 Q. What's it mean when it says
11 48 percent SOV?

12 A. That stands for share of
13 voice. You go -- you go out -- market
14 research, and this is available in the
15 market research document, go out and they
16 ask doctors which product, like, they
17 recall, did they recall, like, Fentora,
18 Onsolis, Abstral, Lazanda, and 48 percent
19 of them recalled Fentora, 8.9 Abstral, so
20 it's a -- how large their share of voice
21 is.

22 Q. Okay. Page 10 of this
23 document?

24 A. Mm-hmm.

1 Q. In the "Imagine" slides has
2 a -- a graph, a circle graph?

3 A. Mm-hmm.

4 Q. And then below that graph it
5 says, "Teva products make up about
6 60 percent of the overall U.S. TIRF
7 market sales."

8 Do you see that?

9 A. Yes.

10 Q. Okay. So the earlier slide
11 referenced 27 percent of the TIRF market,
12 and then we have a slide that talks about
13 60 percent of the TIRF market sales.

14 Can you explain to me the
15 discrepancy between the two?

16 A. It looks like this is
17 prescriptions. And this is dollars.

18 Q. Okay. And we have a dollar
19 figure of approximately \$173 million,
20 correct?

21 A. Correct.

22 Q. And if we look at the
23 electronic version, it's a little better
24 than what I gave you in paper. You see

1 other drugs listed such as Actiq, Subsys,
2 and generics, correct?

3 A. Yes.

4 Q. All right. The -- that
5 generic fentanyl slice, would that
6 include Teva products?

7 A. No, I don't -- I don't
8 believe so. I'm not sure.

9 Q. Okay. What generic --

10 A. That would be --

11 Q. -- TIRFs would have been on
12 the market at this time?

13 A. Actiq. Generic Actiq.

14 Q. Okay. That's it, right?

15 A. Yeah.

16 Q. That was the only generic
17 TIRF out there, right?

18 A. Yeah, I believe so.

19 Q. And Actiq was sold by whom
20 at this time?

21 A. It was generic. I don't
22 believe it was promoted by anyone.

23 Q. Well, I understand it wasn't
24 promoted and I --

1 A. Who --

2 Q. I asked you a bad question.

3 A. Yeah.

4 Q. Who distributed generic
5 Actiq at this time?

6 A. I don't know.

7 Q. Who manufactured it?

8 A. I think -- I don't know who
9 manufactured Actiq, because I'm not sure
10 if it was Teva or if it was the previous
11 company manufacturing on behalf of
12 someone.

13 Q. Okay.

14 A. I'm not sure.

15 Q. By previous company, do you
16 mean Cephalon?

17 A. Yes.

18 Q. Okay. So is it your
19 understanding that the generic fentanyl
20 slice here that we see at 95.9 million
21 for sales, that that Actiq slice, the
22 manufacturer was either Teva or Cephalon?

23 MR. ANDRISANI: Objection.

24 THE WITNESS: I'm not sure

1 who the manufacturer was of
2 generic fentanyl or -- or Actiq.
3 Because it changed companies so
4 many times so I'm not sure.

5 BY MR. MADDEN:

6 Q. Do you know who distributed
7 it?

8 A. Who distributed which --
9 which one?

10 Q. Generic Actiq.

11 A. No. I don't -- I don't know
12 who manufactured or distributed it.

13 Q. Okay. And Actiq is the
14 fentanyl sucker, right?

15 A. Yes.

16 Q. And it went generic before
17 Fentora was launched, correct?

18 A. Yes.

19 Q. All right. In that same --
20 on that same page, Page 10, on
21 Exhibit 19 -- well, let's take a step
22 back.

23 A. Mm-hmm.

24 Q. If you look at that graph --

1 A. Mm-hmm.

2 Q. Okay. So we see that
3 Fentora is about 50 percent of the -- we
4 have to look at -- well --

5 A. Either way, that's fine.

6 Q. So Fentora is 50 percent of
7 the market that we see on that graph,
8 correct?

9 A. Yes.

10 Q. And that's a branded TIRF
11 product sold by Teva, correct?

12 A. Yes.

13 Q. And then we see Actiq sales
14 of 8.9 percent at 31.2 million, correct?

15 A. Yes.

16 Q. And then we see below that
17 it says, "Teva products make up about
18 60 percent of the overall U.S. TIRF
19 market sales."

20 Do you see that?

21 A. Yes.

22 Q. So if you put the 50 percent
23 Fentora and the approximately 10 percent
24 of Actiq, that would get you to the

1 60 percent, right?

2 A. Yes.

3 Q. Okay. Sorry for the
4 confusion.

5 A. It's okay.

6 Q. All right. In that box
7 that's increasingly dynamic marketplace,
8 did you have anything to do with the --
9 this language that's in that box on this
10 slide?

11 A. Yeah, I mean this would be
12 part of the language that we would have
13 created, these slides would be approved,
14 so yes.

15 Q. Okay. And that slide lists
16 as an increasingly dynamic marketplace, a
17 bullet point called public pressure. Do
18 you see that?

19 A. Yes.

20 Q. What was the public pressure
21 being referenced in this slide?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: I can't recall
24 what exactly public pressure was

1 referring to. In 2013, I mean
2 there are -- I think it relates to
3 like the market access landscape
4 was changing, and as a result of
5 that, there was not access to
6 medications. There were more
7 restrictions being placed on
8 opioids.

9 BY MR. MADDEN:

10 Q. Was the public pressure, to
11 your memory, in 2013, being applied in
12 that there was a growing opioid epidemic?

13 MR. ANDRISANI: Objection.

14 THE WITNESS: I mean there
15 was a growing opioid epidemic. I
16 don't know if that was a result of
17 the public pressure.

18 BY MR. MADDEN:

19 Q. Okay. I guess my question
20 is the reverse of that. Is the public
21 pressure that's listed as a changing
22 market dynamic, is that public pressure
23 as a result of the growing opioid
24 epidemic?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: It could be as
3 a result of that, but it could
4 also be as a result of some of the
5 restrictions that I talked about
6 earlier through market access and
7 the -- the inability for patients
8 to receive these therapies.

9 It was a time when the
10 market access landscape was
11 getting severely constricted and
12 more steps were, like we talked
13 about earlier, like NDC blocks
14 were being put on place, so I
15 think there'd be a combination.

16 BY MR. MADDEN:

17 Q. So there were a time when
18 third-party payers were being more strict
19 about prior authorization for fentanyl
20 products?

21 A. Yeah -- well, for all.

22 Q. All opioids?

23 A. Yes.

24 Q. Okay. Let's go to Page 13

1 of this "Imagine" slide presentation from
2 2013. It says, "Fentora is responsive to
3 promotion," and then it has a tactic and
4 a total ROI.

5 A. Mm-hmm.

6 Q. What -- what do you
7 understand the total ROI to mean?

8 A. ROI is return on investment.
9 That is something that ZS & Associates
10 calculates on a sales call and whether or
11 not it was effective.

12 Q. Okay. ZS Associates, was
13 that a third-party vendor?

14 A. They are. They do market
15 research.

16 Q. Okay. And would they
17 actually go interview doctors after sales
18 calls to generate data?

19 A. I don't know if they
20 specifically interviewed doctors, but
21 they would look at, like, the prescribing
22 data from IMS that we talked about
23 earlier and then come up with an ROI
24 analysis for that.

1 Q. Okay. And so looking at
2 this, Page 13, we see a sales call has a
3 return on investment of 160 percent --

4 A. Right.

5 Q. -- correct?

6 So would that be a
7 comparison at the cost to the company of
8 that sales call versus the money
9 generated for the Fentora prescription?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: Yes.

12 BY MR. MADDEN:

13 Q. Okay. And what about
14 promotion programs venue at 117 percent?
15 What would that mean?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: I don't know
18 if it necessarily tied back to the
19 dollar figure, because within the
20 sales call there was -- for
21 example, an Rx savings card was --
22 essentially provided financial
23 assistance for patients.

24 So 117 percent would tie

1 back to the overall amount of
2 money that was being spent on
3 promotional programs.

4 BY MR. MADDEN:

5 Q. Got it. When it says,
6 "Promotional programs - venue versus -
7 office," what do you understand that to
8 mean?

9 A. The venue would be outside
10 of an office, like at a hotel or a
11 conference center. And office would be
12 in the doctor's office.

13 Q. And this is where a speaker
14 would come and speak to the doctor either
15 inside the office or at an outside venue?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: Yes.

18 BY MR. MADDEN:

19 Q. Okay. What is PA Plus.

20 A. PA Plus was a prior
21 authorization. It was a third-party
22 vendor that provided prior authorization
23 assistance that we talked about earlier,
24 like the 1-800 number that the reps

1 didn't have but that the doctors could
2 access to help get patients on Fentora.

3 Q. Did Cephalon and/or Teva pay
4 that third-party vendor to assist the
5 doctors with prior authorization process?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: No.

8 BY MR. MADDEN:

9 Q. How were the third party
10 vendors compensated then?

11 MR. ANDRISANI: Objection.

12 THE WITNESS: We would sign
13 up for their -- let me think. We
14 would sign up for their program
15 and the doctors in Cover My Meds
16 would -- they create an account in
17 Cover My Meds. And that platform
18 on the internet would give them
19 the ability to download prior
20 authorization forms to the
21 insurance company.

22 It wouldn't complete the
23 form for them. Instead a doctor
24 going to, like, Blue Cross and all

1 the other plans, it was one area
2 that they could go to get that
3 form.

4 BY MR. MADDEN:

5 Q. So the doctor would go
6 out-of-pocket to pay for that prior
7 authorization plus program?

8 MR. ANDRISANI: Objection.

9 THE WITNESS: To my
10 knowledge, it's free to doctors.
11 I don't know if they pay a fee or
12 not. But I think --

13 BY MR. MADDEN:

14 Q. If it's free to doctors,
15 somebody has got to be paying the PA Plus
16 people?

17 A. Yeah.

18 Q. Who is paying them?

19 MR. ANDRISANI: Objection.

20 THE WITNESS: Well, we --
21 and maybe I misstated. But we
22 would enter into a contract with
23 Cover My Meds and PA Plus so that
24 our product was within their

1 platform with multiple other
2 products.

3 BY MR. MADDEN:

4 Q. Got it. And so the
5 contract --

6 A. Sorry, I may have misspoke

7 --

8 Q. So the contract for this PA
9 Plus which assisted with prior
10 authorizations, was between Teva and this
11 third party?

12 A. Correct.

13 Q. What do you understand the
14 circle graph there or pie graph, rather,
15 to mean on this Page 13?

16 A. It goes back to what we
17 spoke about earlier, where about 68,
18 70 percent of the sales were carryover
19 from previous, and 30 percent were new.

20 Q. Carryover from what?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: So if a
23 patient with cancer went on
24 Fentora, they would typically be

1 on it for a while. It wasn't
2 something that you would go on and
3 off of.

4 BY MR. MADDEN:

5 Q. Okay. Carryover from prior
6 years?

7 A. Yeah, or months. Yeah.
8 How much longer?

9 Q. Do you want to break for
10 lunch now? We can. Fine by me.

11 A. Do you want to do like
12 another half hour and then break for
13 lunch? Or if that doesn't work we can
14 break for lunch now.

15 Q. Yeah, we can go another half
16 hour.

17 A. Okay. Does that work for
18 you guys?

19 Okay. I still see breakfast
20 back there.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-20.)

24 BY MR. MADDEN:

1 Q. Exhibit 20 I handed you,
2 which is an e-mail string from February
3 of 2012. And with these e-mail strings
4 you've got to kind of start at the bottom
5 and go to the top. So the bottom e-mail
6 is from you to James Wilson regarding
7 Fentora reprints.

8 Do you see that?

9 A. Yes.

10 Q. Who is James Wilson?

11 A. Okay. I didn't remember.

12 He is from Buddco. Buddco is a
13 fulfillment house. They would have all
14 of the promotional materials where a
15 representative would order stuff.

16 Q. All right.

17 A. It's a warehouse.

18 Q. By promotional materials
19 from this warehouse, do you mean
20 materials that the sales force could use
21 in detailing doctors, right?

22 A. Yes.

23 Q. All right. So you say, "I
24 need to make an adjustment to the

¹ warehouse inventory and ordering form for
² the reps. Only the Portenoy FEN-2227,
³ and Weinstein FEN-2225 reprints should be
⁴ available for ordering."

5 Do you see that?

6 A. Yes.

7 Q. Why in February 10, 2012,
8 did you issue this direction to
9 Mr. Wilson?

10 A. I'm not sure without the
11 context behind it. There were different
12 reprints that were used. And I think at
13 one point, just due to the amount of
14 reprints, we just consolidated it down to
15 make it simpler.

16 Q. One of your instructions is
17 that all other reprints should be removed
18 from ordering. Do you recall what those
19 other reprints were?

20 A. I don't recall all of them.

Q. How would the sales force use the reprints in detailing doctors?

23 MR. ANDRISANI: Objection.

24 THE WITNESS: If a reprint

1 was approved through the PARC
2 system, they would use that if a
3 doctor asked additional
4 information about what was
5 contained within a visual aid or a
6 brochure.

7 BY MR. MADDEN:

8 Q. All right. So if a doctor
9 asked about use of Fentora for back pain,
10 could the sales rep use a reprint to
11 leave with the doctor?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: No.

14 BY MR. MADDEN:

15 Q. Why not?

16 A. They were always instructed
17 to state the indication and go back to
18 the approved prescribing and the approved
19 use. Back pain was not one of those.

20 Q. Okay. What additional
21 information would be in these reprints
22 then, other than what was in the label
23 information?

24 A. Really not -- not much, to

1 my knowledge. A lot of these reprints,
2 again, they were studies that built the
3 prescribing information and led to the
4 approval.

5 (Document marked for
6 identification as Exhibit
7 Teva-Day-21.)

8 (Document marked for
9 identification as Exhibit
10 Teva-Day-22.)

11 BY MR. MADDEN:

12 Q. All right, sir. I'm handing
13 you two exhibits, 21 and 22, that are
14 articles, one from a Sharon Weinstein,
15 M.D., and the other from a Russell
16 Portenoy, M.D., as lead authors.

17 A. Mm-hmm.

18 Q. And on the Portenoy article
19 it has an, "Approved by Matt Day," and a
20 date.

21 Do you see that?

22 A. Yes.

23 Q. Okay. Are these the
24 handouts -- I'm sorry -- or articles

1 mentioned in the e-mail we just reviewed,
2 which are referenced as Portenoy 2227 and
3 Weinstein 2225?

4 A. Yes, they should be.

5 Q. So you were telling the guy
6 at the warehouse these are the two
7 articles that sales reps can order from
8 here on out, correct?

9 A. Yes.

10 Q. And do you recall the other
11 articles that you were discontinuing, did
12 they discuss use of Fentora off label?

13 A. No.

14 MR. ANDRISANI: Objection.

15 BY MR. MADDEN:

16 Q. They did not?

17 A. No.

18 Q. Were there ever --

19 A. Not to my knowledge, no.

20 Q. Were there ever Fentora
21 handouts that discussed use of Fentora
22 off label?

23 A. No.

24 Q. Did you ever see posters at

1 a convention that discussed use of
2 Fentora off label?

3 A. The medical department would
4 present posters. But I never saw them at
5 the conference. Like that was handled by
6 medical. Not -- anything that we had was
7 approved through this process that you
8 see here, through like the PARC, legal,
9 compliance, and regulatory, and
10 consistent with the prescribing
11 information.

12 Q. Okay. When would you have
13 an opportunity to see posters?

14 A. The only time I would see
15 posters is when I went to the conference.

16 Q. As Fentora product manager,
17 did medical run the posters by you before
18 they were used at a conference?

19 A. No.

20 MR. ANDRISANI: Objection.

21 THE WITNESS: I didn't have
22 any input into that.

23 BY MR. MADDEN:

24 Q. And so as Fentora product

1 manager, did you have occasion to go to
2 national conferences?

3 A. Yes.

4 Q. And those could be pain
5 conferences, correct?

6 A. Correct.

7 Q. And when you went to those,
8 would you stop by the Fentora booth?

9 A. Yes.

10 Q. And you'd see what posters
11 were being displayed at the Fentora
12 booth?

13 A. The posters wouldn't be
14 displayed at the booth. The booth was
15 just the promotional material that was
16 approved through PARC. The posters were
17 in a separate hall, like a poster
18 session.

19 Q. Okay. Would you have
20 occasion at those national conferences to
21 walk through the posters halls and see
22 what posters were associated with
23 Fentora?

24 A. Yes, we could see them.

1 Q. All right. When you did
2 that, did you ever see posters for
3 Fentora that were for other than
4 breakthrough cancer pain?

5 A. I can't recall any specific
6 ones, no. I know it was part -- again,
7 this, this was for medical. I know it
8 was part of the medical development
9 program, but I can't recall specifically
10 what they had studied, what they had
11 published, what posters were presented.

12 Q. All right. I want to go --
13 before we break for lunch, maybe I can
14 get through this section.

15 A. These are done?

16 Q. Yes.

17 MR. MADDEN: You know, we
18 probably ought to break for lunch,
19 because I -- my next section we
20 probably don't want to break up,
21 so....

22 THE WITNESS: Okay.

23 MR. MADDEN: Okay?

24 THE WITNESS: Sounds good.

1 THE VIDEOGRAPHER: Going off
2 the record. The time is 1:08.

3 — — — —

4 (Lunch break.)

5 - - -

10 BY MR. MADDEN:

11 Q. Mr. Day, we're back after a
12 lunch break. And I want to go back to a
13 subject that we started talking about
14 this morning, which is the Pain Matters
15 unbranded marketing that we talked about
16 this morning.

17 A. Yes.

Q. It's a campaign, correct?

19 A. Yes.

20 Q. And your role was as
21 director of that campaign in the
22 marketing department?

23 A. Yes.

Q. All right.

1 (Document marked for
2 identification as Exhibit
3 Teva-Day-23.)

4 BY MR. MADDEN:

5 Q. I'll hand you Exhibit 23.

6 We have a cover e-mail dated
7 11/12/2014, with an attachment of Teva
8 Pain Matters routes. And that's
9 forwarded to you from Samantha Schwarz,
10 November 12, 2014.

11 Do you see that?

12 A. Yes.

13 Q. Ms. Schwarz was?

14 A. GolinHarris was our PR
15 agency.

16 Q. I see. And the people cc'd
17 are those all GolinHarris people?

18 A. Yes, they are.

19 Q. And is that the company that
20 you used to assist you in this unbranded
21 marketing campaign called Pain Matters?

22 A. Yes.

23 Q. If we go to the second page,
24 which is a Bates number ending 565. You

1 see a slide at the bottom of that page
2 which has a quote that says, "Teva
3 understands the risk of opioid abuse as a
4 societal challenge and one many
5 healthcare professionals face in treating
6 people living with chronic pain."

7 Do you see that?

8 A. Yes.

9 Q. I can't tell who that quote
10 is attributed to. Do you know?

11 A. I believe it's Dr. Michael
12 Hayden who was our chief, excuse me,
13 medical officer at the time.

14 Q. Okay. Dr. Hayden at the
15 time was inhouse with Teva?

16 A. Yes.

17 Q. Okay. And what do you
18 understand this second page to be, is
19 this part of the website?

20 A. It is, yes.

21 Q. And it was forwarded to you
22 for approval then?

23 A. Yes, it -- yes. Yes, we
24 would update the website and this was

1 sent to me. Now I wouldn't approve this
2 solely. This would be in a draft version
3 and it would go back into that PARC
4 committee that I talked about earlier
5 that would review the content.

6 Q. What is the societal
7 challenge that's being referenced here,
8 opioid abuse?

9 A. I don't -- I don't know. I
10 didn't speak to Dr. Hayden directly.

11 Q. At the time you received
12 this, you were the director for Pain
13 Matters marketing, right?

14 A. I was, yes.

15 Q. And this was part of that
16 marketing program, correct?

17 A. Correct.

18 Q. Okay. And you have included
19 a quote from Dr. Hayden that says, "Teva
20 understands the risk of opioid abuse as a
21 societal challenge."

22 A. Yeah. I mean, I think they
23 can be multifaceted, right. Abuse,
24 misuse, diversion, I think he's referring

1 to all of those as societal challenges
2 that were going on and that still exist
3 today.

4 Q. Okay. This campaign then
5 was a public relations campaign for Teva?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: It was -- no,
8 it was managed and created by a
9 public relations firm but it
10 wasn't a PR campaign as much as it
11 was really, in its truest sense, a
12 campaign of information and
13 education around pain management,
14 appropriate use of opioids, other
15 therapies, resources.

16 There was a lot of
17 information within the pain
18 community and there was no one
19 place to get all the resources
20 that you needed. So it wasn't
21 necessarily a PR campaign. It was
22 run by the PR company.

23 BY MR. MADDEN:

24 Q. So typically, when a

1 campaign such as this is run, it is
2 either for an existing opioid or pain
3 product, or an anticipated opioid or pain
4 product. Was this campaign run in
5 connection with either of those?

6 A. This campaign was run more
7 as a franchise campaign to speak to
8 Teva's commitment within pain management,
9 not just specific to opioids, Fentora or
10 Amrix or things in development. But this
11 was a therapeutic focus of the
12 organization, was pain care. So it
13 was -- it was a larger franchise.

14 Q. What other pain products
15 were within that pain franchise at the
16 time this campaign was run?

17 A. So this was a time, as we
18 spoke about earlier, with Fentora and
19 Amrix, and then the -- also the pipeline
20 which was developing the abuse-deterrent
21 opioids. And the company was actually
22 looking into other areas of pain
23 management as well, like devices. As I
24 mentioned, this was a therapeutic focus

1 for Teva.

2 Q. At the time Pain Matters was
3 run, was Fentora being detailed to
4 doctors?

5 A. From what I can recall,
6 there may have been a short period of
7 time that it was. And then I think, if I
8 recall, it was about four to six months,
9 and then it ceased promotion, and this
10 campaign continued.

11 Q. All right. At the time Pain
12 Matters campaign was run, was Amrix being
13 promoted to doctors?

14 A. Yes.

15 Q. At the time this campaign
16 was run, was the abuse-deterrant formula
17 Vantrela being detailed to doctors?

18 A. No, it wasn't.

19 (Document marked for
20 identification as Exhibit
21 Teva-Day-25.)

22 BY MR. MADDEN:

23 Q. Mr. Day, I'll hand you
24 Exhibit 25.

1 A. Mm-hmm.

2 Q. We spoke this morning about
3 media portion for the Pain Matters
4 campaign.

5 A. Mm-hmm.

6 Q. And this indicates that
7 there was a screening on the Discovery
8 Channel. Is that true?

9 A. Pain Matters originally was
10 a documentary that was created by the
11 Discovery Channel that chronicled the
12 lives of four patients that were
13 suffering from painful conditions but
14 then evolved into a campaign. So the
15 movie clip that you see here, like Derek
16 McGuiness was a Iraqi war veteran van,
17 who was highlighted in the film in this
18 program. That's in the brochure.

19 Q. Okay. So at the bottom we
20 see, "Supporting partners of Pain
21 Matters." Teva is listed as one of the
22 supporting partners, correct?

23 A. Mm-hmm.

24 Q. Is that true?

1 A. Yes.

2 Q. Did Teva help fund Pain
3 Matters, either the documentary or the
4 website?

5 A. This is referring to the
6 documentary, which we did help fund
7 through the Discovery Channel.

8 Q. Do you recall what the
9 amount of funding was?

10 A. I do not.

11 Q. The speakers are listed
12 here, correct? Are any of those inhouse
13 Teva people?

14 A. No.

15 Q. All right. And then the
16 description for the documentary says,
17 "Exploring perspectives around unmet
18 needs in chronic pain care and discussing
19 the future of pain management."

20 Do you see that?

21 A. Yes.

22 Q. At this time what chronic
23 pain medications were being promoted by
24 Teva?

1 A. We weren't promoting any
2 chronic pain.

3 Q. So the marketing campaign
4 centered around chronic pain, even though
5 the company wasn't marketing any products
6 for chronic pain?

7 MR. ANDRISANI: Objection.

12 BY MR. MADDEN:

13 Q. But you would concede that
14 this description from the documentary
15 from the Discovery Channel references
16 unmet needs in chronic pain care,
17 correct?

18 A. Yes.

19 Q. I'm going backwards on you
20 here.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-24.)

24 BY MR. MADDEN:

1 Q. We're going to mark this one
2 Exhibit 24.

3 A. Okay. Keep this one?

4 Q. Keep it.

5 A. Okay.

6 Q. I'll hand you Exhibit 24.

7 Should be the second one. All right.

8 So you get this incremental
9 performance -- strike that.

10 Exhibit 24 is an incremental
11 performance detail for the fourth quarter
12 of 2015 with regard to Pain Matters,
13 correct?

14 A. Correct.

15 Q. Is this a report that you
16 would have received as the director of
17 the Pain Matters campaign?

18 A. Yes.

19 Q. From whom would you have
20 received it?

21 A. This would come from the PR
22 agency GolinHarris.

23 Q. All right. If we go to Page
24 2 of Exhibit 24, in this report, do you

1 see that there is a bullet point that
2 says, "Total 2015 budget \$998,750"?

3 A. Yes.

4 Q. Does that indicate to you
5 that Teva spent almost a million dollars
6 in 2015 on the Pain Matters campaign?

7 A. Yes, although I'm not sure
8 that is exactly what was spent that year.
9 I think it was less. But yes, that
10 was -- that was the approved budget.

11 Q. All right. And did you
12 oversee that budget?

13 A. Yes.

14 Q. And were you in charge of
15 approving the spend on that budget?

16 A. Yes. I would make the
17 recommendations, and then my senior line
18 management would approve it.

19 Q. If we go to page -- the next
20 page. "Pain Matters website, media spend
21 and traffic."

22 Do you see that?

23 A. Yes.

24 Q. And do we see a graph that

1 shows the media spend and then the
2 website traffic associated therewith?

3 A. Yes.

4 Q. So was a goal of the Pain
5 Matters campaign to drive viewers to the
6 Pain Matters website?

7 A. Yes.

8 Q. And what would be the
9 purpose of that if the company wasn't
10 marketing any pain products at the time?

11 MR. ANDRISANI: Objection.

12 THE WITNESS: The purpose of
13 the Pain Matters campaign was to
14 provide information and resources
15 in one place for patients and
16 healthcare professionals about
17 management of pain and provide
18 those resources in one area. And
19 it was a larger, as I mentioned
20 earlier, kind of franchise
21 umbrella, where, you know, we have
22 a therapeutic focus in pain. Not
23 just the products, but the
24 condition itself.

1 BY MR. MADDEN:

2 Q. Okay. So you had an
3 understanding that with this, at least
4 from the document, million dollars spent
5 in 2015, that doctors and patients would
6 go to the website if they were impacted
7 by that media spend to look at the
8 website?

9 A. Mm-hmm.

10 Q. Correct?

11 A. Yes.

12 Q. When is the last time that
13 you looked at the Pain Matters website?

14 A. I cannot recall. Maybe
15 three months ago.

16 Q. Is it still up?

17 A. I believe, yes.

18 Q. Is -- I know you recently
19 left Teva within the last couple weeks,
20 but as of the time that you left Teva,
21 was Teva still contributing to the Pain
22 Matters campaign?

23 A. No.

24 Q. When did that stop?

1 A. Approximately a year ago.

2 Q. Okay. Do you know why it
3 stopped?

4 A. The short answer is budget
5 cuts. Teva's going to a significant
6 restructuring and as a part of that lost
7 a lot of funding for various projects.

8 (Document marked for
9 identification as Exhibit
10 Teva-Day-26.)

11 BY MR. MADDEN:

12 Q. Let me hand you Exhibit 26.
13 Do you recognize Exhibit 26 as printed
14 excerpts from web pages of the Pain
15 Matters website?

16 A. Yes.

17 Q. What role, if any, did you
18 have in reviewing and/or approving items
19 that went on the Pain Matters website?

20 A. I would work myself. I
21 would work with the PR agency, Golin. We
22 would develop the drafts of the various
23 different pages of the website that you
24 see here. And then it would be submitted

1 into PARC, the promotional review
2 committee, to review the content and
3 approve it.

4 Q. The promotional review
5 committee, was that a committee within
6 Teva?

7 A. Yes.

8 Q. Were there any other
9 manufacturers or distributors of opioids
10 who contributed to the Pain Matters
11 website?

12 A. No.

13 Q. So it was really a Teva
14 website, correct?

15 A. Yes.

16 Q. Because it's printed from
17 the web, page numbers are difficult. So
18 I've provided tabs for you. Okay?

19 A. Okay. Great.

20 Q. So the third page in is
21 tabbed. We have a page that says, "Pain
22 perspective, hear from the community."

23 Do you see that page?

24 A. Yes.

1 Q. Okay. And we see Bob
2 Twillman, Ph.D.?

3 A. Yes.

4 Q. Was he one of the paid
5 speakers for Fentora?

6 A. He was not paid.

7 Q. Okay. What was
8 Dr. Twillman's role with regard to the
9 Pain Matters website?

10 A. He runs a patient advocacy
11 group, and from time to time he would
12 contribute blogs or posts about different
13 topics within the pain community.

14 Q. Okay. And if we look at a
15 quote from him on Page 3. It says,
16 "Chronic pain continues to be a serious
17 issue for millions of Americans, and Teva
18 is committed to supporting responsible
19 pain management that meets the needs of
20 people living with pain and healthcare
21 professionals," correct?

22 A. Mm-hmm, yes.

23 Q. So you have this quote on
24 your Pain Matters website from

1 Dr. Twillman regarding chronic pain, even
2 though at the time Teva has got no
3 chronic pain medications it's marketing,
4 correct?

5 MR. ANDRISANI: Objection.

6 THE WITNESS: Correct.

7 BY MR. MADDEN:

8 Q. And you're asking -- you're
9 spending money for doctors and patients
10 to go look at this website that's
11 discussing chronic pain, correct?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: Not just
14 chronic pain, other parts, but
15 yes, through the media spend that
16 we saw earlier.

17 BY MR. MADDEN:

18 Q. Right. But this
19 Dr. Twillman who's giving a quote here is
20 talking about chronic pain, right?

21 A. Yes.

22 Q. And then if we go to the
23 next page, there's a place to click to
24 learn more about Teva Pharmaceuticals,

1 right, right after his quote. Do you see
2 that box at the top?

3 A. Yes.

4 Q. Okay. So you've got -- is
5 that a correct depiction of the website?

6 A. I'm not sure if this quote
7 was associated with him or if this quote
8 may have been associated with Michael
9 Hayden.

10 Q. Okay.

11 A. I can't tell from the screen
12 shot with what's around it.

13 Q. Michael Hayden is inhouse
14 Teva doctor, correct?

15 A. He is.

16 Q. All right. So --

17 A. Wait, yes, whether it was a
18 quote from him or from Michael Hayden,
19 yes, you could click to learn more about
20 Teva.

21 Q. But if you click on "learn
22 more about Teva Pharmaceuticals," there
23 won't be any pharmaceuticals for the user
24 to review that are marketed for chronic

1 pain, are there?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: This would go
4 to the Teva Pharmaceuticals larger
5 umbrella, to the -- to the
6 company, to learn about the
7 company.

8 BY MR. MADDEN:

9 Q. I see.

10 A. And its therapeutic focus,
11 one of those being pain care.

12 Q. Okay. Again, tab -- so it
13 would be the third tab in, which is six
14 pages into our document. You have a page
15 that says, "Teva Pharmaceuticals and pain
16 management," correct?

17 A. Yes.

18 Q. And this would have been
19 approved by you as the manager of this
20 campaign, correct?

21 A. The committee again.

22 Q. All right. But you would
23 have had some role in approving it,
24 right?

1 A. I would work with Golin to
2 develop all this content and then put it
3 through the approval process.

4 Q. Okay. On this page, the
5 first sentence says, "At Teva
6 Pharmaceuticals we understand that
7 chronic pain affects more than 100
8 million Americans. It can greatly affect
9 people, touching many aspects of lives,
10 including their physical health and
11 ability to participate in daily tasks."

12 Do you see that?

13 A. Mm-hmm.

14 Q. And then below that, "Our
15 commitment to pain care," in the middle
16 of that paragraph says, "Prescription
17 opioid medications are an important part
18 of treatment plan for many people living
19 with chronic pain, but we know that they
20 carry a serious risk of abuse and misuse.
21 Teva is equally committed to addressing
22 the serious problems of chronic pain and
23 prescription drug abuse."

24 Do you see that?

1 A. Mm-hmm. Yes.

2 Q. That's language that you
3 reviewed and approved?

4 A. Yes.

5 Q. Okay. Why would you put on
6 this Pain Matters website information
7 about use of opioid medications for
8 treatment plan for chronic pain when none
9 of the medications we've discussed,
10 Fentora, Actiq, were indicated for
11 chronic pain?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: At the time
14 the organization was looking to
15 continue its commitment to pain
16 management. The abuse-deterrant
17 formulations were indicated for
18 chronic pain, or those were the
19 indications they were seeking.

20 The current portfolio with Amrix
21 and Fentora was not in promotion.

22 The -- what this is reflecting is
23 that there was a commitment to
24 pain care. There was a

1 recognition that unfortunately
2 abuse and misuse can occur. Part
3 of the solution could be
4 abuse-deterrant technologies which
5 is what we were focusing on.

6 BY MR. MADDEN:

7 Q. All right. But the user of
8 the website, the doctor or the patient
9 who saw The Discovery Channel show --

10 A. Mm-hmm.

11 Q. -- who then went and clicked
12 on the Pain Matters website, and was
13 interested in chronic pain and opioid use
14 for chronic pain, there was no Teva
15 product available for that user to go
16 seek at that point for chronic pain, was
17 there?

18 A. No.

19 Q. At least on label, right?

20 A. Correct. This was education
21 and information, and primarily when you
22 are talking about chronic pain, the
23 organization was developing
24 abuse-deterrant technologies for those

1 long-acting opioids that were currently
2 in the market, the re-formulation of
3 hydrocodone to become, you know, less
4 abuse.

5 Q. All right. So the sentence
6 that appears on this page that says,
7 "Teva is equally committed to addressing
8 the serious problems of chronic pain and
9 prescription drug abuse," what was that
10 commitment?

11 MR. ANDRISANI: Objection.

12 THE WITNESS: So the -- I
13 think part of the commitment was
14 to take a look at the portfolio in
15 the opioid products and see how
16 you could improve upon them to
17 deal with some of the risks of
18 abuse, misuse, and diversion. And
19 abuse-deterrant formulations were
20 part of that solution, or part of
21 that commitment.

22 BY MR. MADDEN:

23 Q. Okay. And you had a role
24 with regard to the abuse-deterrant

1 technology, right?

2 A. I did.

3 Q. You were a manager with
4 regard to that drug, correct?

5 A. I was the director, yes.

6 Q. Director, sorry. And
7 ultimately the company decided not to
8 market that drug, even though it got FDA
9 approval, correct?

10 A. Correct.

11 Q. So beyond the
12 abuse-deterrent formulation that was
13 developed but never promoted, what other
14 commitments did Teva make to address the
15 serious problem of chronic pain and
16 prescription drug abuse?

17 MR. ANDRISANI: Objection.

18 THE WITNESS: So I think the
19 campaign itself was part of that
20 commitment to provide education
21 around the misuse, diversion and
22 proper pain management.

23 Teva now, and I can't really
24 speak on behalf because I'm not

1 with them, is engaged in a
2 partnership with Regeneron to
3 develop opioid alternatives. So I
4 think that's -- and there's other
5 things that speak to the
6 commitment that Teva was evolving
7 to within pain management.

8 BY MR. MADDEN:

9 Q. Is Regeneron a drug in
10 development that is not an opioid that
11 treats pain?

12 A. It is.

13 Q. Did you have some role or
14 responsibility with regard to it?

15 A. I did.

16 Q. What was your role?

17 A. I was a director of
18 marketing for -- for that.

19 Q. All right. And were there
20 any websites or promotional spins done
21 with regard to Regeneron?

22 A. No.

23 Q. Okay. Let's go to the next
24 page in the Pain Matters website, which

1 is the seventh page in. There's
2 reference to the Alliance to Prevent the
3 Abuse of Medicines on this page. Are you
4 familiar with that?

5 A. Yes.

6 Q. What was the Alliance?

7 A. This is a -- I don't know if
8 it was run by a pharmacy or in
9 collaboration with a pharmacy,
10 wholesalers and industry. It was a
11 cross-functional group that had got
12 together, a non-for-profit, to discuss
13 some of the issues around pain
14 management, and one of those being abuse.

15 Q. Okay.

16 A. I was never a member of the
17 committee.

18 Q. All right. So the alliance
19 committee had presumably a representative
20 from Teva, correct?

21 A. Correct.

22 Q. Who was that?

23 A. I believe at the time this
24 could have been -- I'm not sure. I think

1 it might have been Michael Hayden, but I
2 can't specifically recall.

3 Q. Did you ever attend any
4 alliance committee meetings?

5 A. No.

6 Q. Did you ever --

7 A. A little bit higher than me.

8 Q. All right. Did you ever
9 receive any reports regarding alliance
10 committee meetings?

11 A. No.

12 Q. Do you recognize one of the
13 appliance members Cardinal Health?

14 A. Yes.

15 Q. What -- what does Cardinal
16 Health do, what's their business?

17 A. They are a drug distributor.

18 Q. Okay. How about Kaleo, what
19 do they do?

20 A. I'm not as familiar with
21 Kaleo.

22 Q. All right. What about CVS
23 Caremark. What is their business?

24 A. Same thing, acts as a

1 pharmacy benefit manager.

2 Q. Are there any other drug
3 manufacturers included in the alliance to
4 your knowledge?

5 A. Not to my knowledge. I
6 wouldn't know beyond what's here.

7 Q. Prime Therapeutics, what do
8 they do?

9 A. That's a pharmacy benefit
10 manager, as well.

11 Q. All right. If we go to the
12 next page. I believe it's Page 8. It
13 says "related content." And it says,
14 "Understanding chronic pain. Watch the
15 Pain Matters documentary to learn about
16 the impact of chronic pain."

17 Do you see that?

18 A. Yes.

19 Q. So the website user has the
20 option to watch the Pain Matters
21 documentary on the website?

22 A. Yes.

23 Q. And do you see that they
24 describe the documentary as discussing

1 the impact of chronic pain?

2 A. Yes.

3 Q. The next tab, I believe, is
4 at Page 24. There's a heading that says
5 "Understanding Opioid Abuse and Misuse."

6 A. Yes, I have it.

7 Q. Do you have that page?

8 A. Yes.

9 Q. Did you review and approve
10 this language?

11 A. Yes.

12 Q. Okay. On this web page it
13 says, "More than 12 million people
14 reported using prescription pain
15 medications nonmedically in 2010. That
16 number encompasses both abuse and
17 misuse."

18 Do you see that language?

19 A. Yes.

20 Q. And it then says, "The abuse
21 and misuse of prescription pain
22 medications were responsible for more
23 than 475,000 emergency department visits
24 in 2009, a number that nearly doubled in

1 just five years."

2 Do you see that language?

3 A. Yes.

4 Q. Then it then says, "Further,
5 opioid overdoses in particular are
6 increasingly due to the abuse of
7 prescription painkillers."

8 Do you see that?

9 A. Yes.

10 Q. Who provided that language
11 and data to you?

12 A. The reference would be 10,
13 which would be included in the website in
14 the back here, which is Center for
15 Disease Control, if I'm reading 10
16 correctly. Center for Disease Control
17 and Prevention Policy Impact.

18 Q. Did you gather that data or
19 did the PR company?

20 A. The PR company.

21 Q. Okay. They provided it to
22 you, and you approved this language?

23 A. Yes.

24 Q. And then if you -- so would

1 you agree with me that fentanyl products
2 such as Fentora and Actiq have
3 contributed to the data that we see here?

4 MR. ANDRISANI: Objection.

5 BY MR. MADDEN:

6 Q. With regard to abuse and
7 overdose and hospital visits?

8 MR. ANDRISANI: Objection.

9 THE WITNESS: I don't have
10 the data to know.

11 BY MR. MADDEN:

12 Q. So -- but you put this
13 information in this website called Pain
14 Matters, right?

15 A. Yes.

16 Q. Which is unbranded marketing
17 for the company, right?

18 A. Yes.

19 Q. And presumably you wouldn't
20 put it in there if it didn't apply to
21 your products, would you?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: I don't know
24 if it applies to the products or

1 not. It's a broader statement. I
2 don't know which product is
3 specifically attributed to the
4 facts that we see here.

5 BY MR. MADDEN:

6 Q. Are you aware, during your
7 many years at Cephalon and Teva, of
8 whether there's ever been a report to you
9 regarding overdose, death,
10 hospitalization, associated with the use
11 of Fentora?

12 A. The only one was what we
13 spoke about earlier with the "Dear
14 Healthcare Professional" letter that went
15 out.

16 Q. That's the extent of your
17 knowledge of --

18 A. Yes.

19 Q. -- anybody who has ever OD'd
20 or abused or been to the hospital with
21 the use of Fentora, correct?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: Correct.

24 BY MR. MADDEN:

1 Q. Would you agree with me that
2 this data that you include in the Pain
3 Matters website indicates that there is a
4 serious opioid epidemic problem in the
5 United States?

6 A. Yes.

7 Q. And part of the reason that
8 you, and/or the company were interested
9 in the abuse-deterrant formulation was to
10 address that epidemic, correct?

11 A. Part of the solution, yes.

12 Q. All right. If we go to Page
13 28, which is your next tabbed page,
14 there's a section that says, "The role of
15 opioids in chronic pain management.
16 Prescription pain medications such as
17 opioids may be an appropriate treatment
18 option for people whose chronic pain is
19 not adequately managed by other methods.
20 Opioids are an important option for the
21 treatment of certain types of chronic
22 pain."

23 Did you review and approve
24 that language?

1 A. Yes.

2 Q. And who provided you that
3 language?

4 A. That would be from the PR
5 agency.

6 Q. As the director or manager
7 of the Pain Matters campaign, as the
8 director for Fentora, can you point me to
9 any randomized controlled trials that
10 indicate opioids are safe and effective
11 for the management -- safe and effective
12 for the management of chronic pain?

13 MR. ANDRISANI: Objection.

14 THE WITNESS: I'm sorry, can
15 you ask the question again?

16 BY MR. MADDEN:

17 Q. Sure. Tell me -- I'm
18 getting your titles mixed up. As we get
19 past lunch here, it's difficult. So
20 forgive me.

21 A. It's okay.

22 Q. Your role with regard to
23 Fentora at one point was product manager.

24 A. Product manager.

1 Q. And then you became a
2 marketing director after that, right?
3 A. Correct.

4 Q. And Fentora was under your
5 umbrella?

6 A. For a short period of time,
7 yes.

8 Q. All right. And you received
9 a promotion to --

10 A. Abuse deterrent --

11 Q. -- to do the abuse deterrent
12 at one point?

13 A. Yes.

14 Q. And then you oversaw this
15 Pain Matters website, correct?

16 A. Yes, correct.

17 Q. All right. And we have
18 language in the Pain Matters website that
19 says that opioids are an appropriate
20 treatment option for people in chronic
21 pain. Do you see that language?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: Yes.

24 BY MR. MADDEN:

1 Q. My question is, can you
2 point me to any randomized controlled
3 trials that you're aware of that show
4 that opioids are safe and effective for
5 the management of chronic pain?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: I can point
8 you to the reference.

9 BY MR. MADDEN:

10 Q. All right. Let's look at
11 the reference?

12 A. Number 9. But I don't run
13 clinical trials, randomized clinical
14 trials. So I'm not sure what this is.

15 Q. You have an article as
16 Number 9, right?

17 A. Yeah.

18 Q. By -- who is that?
19 Manchikanti and others?

20 A. "Monitoring Opioid Adherence
21 in Chronic Pain Patients: Tools,
22 Techniques, and Utility."

23 Q. Okay. So that's not a
24 randomized controlled trial, is it?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: No.

3 BY MR. MADDEN:

4 Q. All right. And then the
5 other cite that we have is 2, which is
6 the American Academy of Pain Medicine,
7 "Use of Opioids For Treatment of Chronic
8 Pain: A Statement From the American
9 Academy of Pain Medicine."

10 A. Mm-hmm.

11 Q. Those are the two references
12 that we see there?

13 A. Correct.

14 Q. So can you -- those are not
15 randomized controlled trials, are they?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: I don't
18 believe there's any randomized
19 controlled trials within those
20 references.

21 BY MR. MADDEN:

22 Q. Fair enough. So putting
23 those references aside, with all your
24 training and experience with regard to

1 Fentora and opioids --

2 A. Yeah.

3 Q. -- can you point me to any
4 randomized controlled trial that shows
5 that opioids are safe and effective for
6 the treatment of chronic pain?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: There are
9 trials. I don't know what they're
10 concluding without knowing, like,
11 the specific trial. So there have
12 been lots of trials on different
13 opioid therapies, long-acting,
14 short-acting, TIRFs.

15 Whether they're safe and
16 effective, that information would
17 be contained within the trial. So
18 without the -- I know that there
19 are trials that study these drugs.

20 BY MR. MADDEN:

21 Q. I want to be very specific
22 here. I'm only talking about chronic
23 pain. Not short-term pain, not
24 breakthrough pain, chronic pain.

1 Can you point me today to
2 any trials that show opioid therapy is
3 safe and effective for chronic pain?

4 MR. ANDRISANI: Objection.

5 THE WITNESS: I don't know
6 the specific trials. But I do
7 know that there are therapies and
8 opioids approved for the
9 management of chronic pain, which
10 would thereby stand that there
11 were trials that would be
12 contained within their prescribing
13 information.

14 BY MR. MADDEN:

15 Q. Were you -- are you familiar
16 with another unbranded marketing campaign
17 by Teva or Cephalon called
18 BreakthroughPain.com?

19 A. No.

20 Q. You had nothing to do with
21 that?

22 A. No.

23 Q. Have you ever seen that
24 website?

1 A. No.

2 Q. Are you doing all right?

3 A. Yeah, I'm fine. Thank you.

4 (Document marked for
5 identification as Exhibit
6 Teva-Day-27.)

7 BY MR. MADDEN:

8 Q. Exhibit 27, I'm going to
9 hand you, is a slide deck. It looks like
10 slide deck by Teva for the American
11 Academy of Pain Medicine, Pre-Con Deck.
12 Did you have any role or responsibility
13 with regard to this slide deck?

14 A. I can't recall. Do we know
15 when it was created?

16 Q. Do you recall participating
17 in any meetings regarding pre-conference
18 meeting for the AAPM? It looks like 2010
19 is our time frame here.

20 A. I may have.

21 Q. I take that back?

22 MR. ANDRISANI: Page --
23 yeah.

24 BY MR. MADDEN:

1 Q. If you go to the fourth page
2 in, fifth page in, we're looking at
3 February of 2012.

4 A. Yes. This would be -- I
5 mean I don't know what my exact
6 involvement. This would be when I was
7 coming into the marketing role for
8 Fentora. 2007, 2010. Yes, coming out of
9 the field and into the marketing role,
10 around this same time frame.

11 Q. And is this a meeting that
12 you would have attended, the AAPM?

13 A. I don't know if I would have
14 attended this or not.

15 Q. All right. I want to point
16 your attention to Page 3. Do you see
17 that -- I think that's a typo there --
18 AAPM demographics from 2010 that are
19 listed?

20 A. Yes.

21 Q. There don't appear to be any
22 oncologists listed, correct?

23 A. No, not from other, no.

24 Current practice settings, other. I'm

1 not sure what that is, but I --

2 Q. And then the next page in
3 the slide deck lists conference
4 objectives, correct?

5 A. Yes.

6 Q. And first objective is
7 increase brand awareness of Fentora?

8 A. Yes.

9 Q. And the last objective is
10 generate appropriate sales leads for PCS
11 representatives, correct?

12 A. Yes.

13 Q. And then if we go to Page 8,
14 you see the Fentora promotional materials
15 that are listed?

16 A. Yes.

17 Q. Some of these we talked
18 about. MIRFs we haven't talked about.
19 What are those?

20 A. It stands for medical
21 information request form.

22 Q. So if a doctor asks an
23 off-label question, is that form
24 generated?

1 A. It could be, yes.

2 Q. These are promotional
3 materials that would be at the booth for
4 this meeting?

5 A. Yes.

6 Q. The last bullet says
7 Fentora/Actiq, do you see that?

8 A. Yes.

9 Q. So at this time in 2012,
10 what promotional materials would be
11 related to Actiq?

12 A. Nothing to my knowledge.

13 Q. So as you sit here today,
14 can you tell me what that means,
15 Fentora/Actiq?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: No.

18 (Document marked for
19 identification as Exhibit
20 Teva-Day-28.)

21 BY MR. MADDEN:

22 Q. All right, sir, I'll hand
23 you Exhibit 28. I'll ask you to look at
24 that.

3 A. Yes.

4 Q. To you and others, regarding
5 IASP posters. Do you recall seeing this
6 e-mail?

7 A. Yes.

8 O. What was the IASP?

9 A. International Association
10 and Society For Pain, I believe, is the
11 acronym.

12 Q. Okay. This would have been
13 a conference then?

14 A. International Society For
15 the Study of Pain. Yes, a conference.

16 Q. Did you attend the
17 conference?

18 A. I do not -- I can't recall
19 it, but I don't believe I would have
20 attended this.

21 Q. It looks like it was in
22 Milan, Italy. Were you high enough up
23 the chain to go to Milan, Italy?

24 A. No, I did not go to Milan,

1 Italy, so I did not attend -- I would
2 have remembered that. No, I didn't go to
3 Italy. I'll go though, if --

4 Q. Who is Aji Nair?

5 A. He was in medical, like
6 global scientific communications, fell
7 under the medical umbrella.

8 Q. Did he office in the U.S.?

9 A. Yes.

10 Q. Okay. The first recipient
11 of the e-mail is Arvind Narayana. Who --

12 A. Yeah.

13 Q. Who is he or she?

14 A. He was the medical director
15 for pain care.

16 Q. Is Mr. -- Dr. Narayana still
17 with the company?

18 A. He is not.

19 Q. Okay. So the e-mail to you
20 and others says, "Attached are the final
21 posters for the International Society For
22 the Study of Pain conference next week in
23 Milan. These data are not published so
24 please do not distribute these to anyone

1 externally. Thank you."

2 Do you see that?

3 A. Yes.

4 Q. And then it lists three
5 original presentations, correct?

6 A. Yes.

7 Q. Would those be original
8 presentation posters for the meeting?

9 A. Yes.

10 Q. Okay. The first one is
11 3055/3056, secondary analysis authored by
12 Narayana and others, right?

13 A. Yes.

14 Q. And Dr. Narayana was inhouse
15 at Teva, correct?

16 A. Yes.

17 Q. Have you seen that poster?

18 A. I can't recall if I've seen
19 it or not.

20 Q. The title indicates that
21 it's -- the poster -- that poster is
22 discussing fentanyl buccal tablet
23 compared with immediate release Oxycodone
24 for the management of breakthrough pain

1 in opioid-tolerant patients with chronic
2 pain. Do you see that?

3 A. Yes.

4 Q. Okay. The fentanyl buccal
5 tablet would be what?

6 A. Fentora.

7 Q. Okay. So Dr. Narayana did
8 two studies comparing Fentora to
9 oxycodone for the management of
10 breakthrough pain?

11 MR. ANDRISANI: Objection.

12 THE WITNESS: I'm not sure
13 if it's two studies or one study.

14 BY MR. MADDEN:

15 Q. Okay. That's probably a bad
16 question anyway. This poster would
17 appear to discuss the use of Fentora as
18 compared to oxycodone for the management
19 of breakthrough pain in patients with
20 chronic pain, correct?

21 A. I mean the title says that.
22 I'm not sure what the primary or
23 secondary endpoints were. And it's a
24 pooled analysis so I'm not exactly sure

1 if it was...

2 Q. That poster is not
3 discussing on-label use of Fentora, is
4 it?

5 MR. ANDRISANI: Objection.

6 THE WITNESS: I don't know.

7 BY MR. MADDEN:

8 Q. Okay. Let's look at the
9 second one. 3052, secondary analysis by
10 Webster and others?

11 A. Mm-hmm.

12 Q. It's a 12-week randomized
13 double-blind placebo-controlled study of
14 fentanyl buccal tablet for the relief --
15 relief of breakthrough pain in
16 opioid-tolerant patients with chronic
17 noncancer-related pain, correct?

18 A. Correct.

19 Q. So that poster discusses the
20 use of Fentora in chronic
21 noncancer-related pain, right?

22 A. The title says that. I
23 don't know what the poster and the data,
24 if they looked at just noncancer or --

1 but yes, the title says that.

2 Q. That's what it says, right?

3 A. Yes.

4 Q. Have you seen that poster?

5 A. No.

6 Q. All right. Then the third
7 one is 3055/3056. The author is Wallace
8 and others. Fentanyl buccal tablet
9 compared with immediate release oxycodone
10 for the management of breakthrough pain
11 in opioid-tolerant patients with chronic
12 pain.

13 Do you see that?

14 A. Yes.

15 Q. Those three posters, if you
16 just look at their description, would
17 appear to be posters that discuss
18 off-label use of Fentora, would you agree
19 with that?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: The
22 description discusses chronic
23 pain.

24 BY MR. MADDEN:

1 Q. Right. Not breakthrough
2 cancer pain, correct?

3 A. They say breakthrough pain.
4 Again, I don't know if there were cancer
5 patients included or not. I guess you
6 could reasonably assume that there
7 wasn't. But without seeing the data and
8 knowing --

9 Q. At least with regard to
10 Number 2, if you just look at the
11 description, the description itself --

12 A. Yeah --

13 Q. -- is a study of chronic
14 noncancer-related pain, right?

15 A. Yes. Seems to be basically.

16 Q. That would be -- would you
17 agree with me that would be an off-label
18 use of Fentora?

19 A. Yes. That's outside its
20 current indication.

21 Q. So when this poster was
22 forwarded to you and others for approval
23 for presentation at the Milan meeting,
24 what occurred?

1 A. I don't know. I wasn't in
2 Milan.

3 Q. Did you push back as the
4 Fentora director and say you can't use
5 that Study Number 2 that talks about
6 chronic noncancer-related pain because
7 that's off-label?

8 MR. ANDRISANI: Objection.

9 THE WITNESS: So this -- in
10 this conference data would
11 typically fall within medical's
12 protocol, not within marketing or
13 sales training.

14 So we strictly adhered to
15 the prescribing information. So
16 they have different protocols. I
17 think, you know, you have to ask
18 them if they presented it there
19 or...

20 But it wouldn't be included
21 in anything that I did.

22 BY MR. MADDEN:

23 Q. All right. Okay. Are you
24 aware of whether Teva had advocacy

1 partners --

2 A. Yes.

3 Q. -- with regard to its pain
4 medications?

5 A. Yes.

6 Q. Who were those advocacy
7 partners?

8 A. An example of an advocacy
9 partner would be the American Society For
10 Pain.

11 Q. How would Teva partner with
12 those advocacy partners in the pain
13 world?

14 A. Typically what would happen
15 is different advocacy -- pain advocacy
16 groups and advocacy groups across
17 different therapeutic areas would contact
18 pharmaceutical industry, in this case
19 Teva, and ask for support in a given year
20 for some of their educational
21 initiatives.

22 Q. Financial support, I take
23 it?

24 A. Financial support.

1 Q. All right. Did GolinHarris
2 assist Teva in identifying such partners?

3 A. They did.

4 Q. And were you involved in
5 that process?

6 A. Yes.

7 Q. How so?

8 A. We would receive hundreds of
9 requests -- I don't know if it was
10 hundreds. But we would receive a lot of
11 requests from different advocacy groups
12 to support them throughout the year.

13 I would take those different
14 requests and then, with a
15 cross-functional team, we would determine
16 what to fund and what not to fund.

17 Q. Okay. So these advocacy
18 partners may reach out to Teva and Teva
19 would make a business decision as to who
20 to fund or not fund, correct?

21 A. Yes.

22 Q. What about the other way,
23 would Teva identify advocacy partners
24 that it wanted to be involved with and

1 approach them?

2 A. We would do -- we wouldn't
3 proactively solicit partnerships. They
4 would most typically approach us. But we
5 would gain an understanding of that
6 organization to ensure that they went
7 through the compliance process and we
8 knew that they were like a safe group to
9 partner with.

10 (Document marked for
11 identification as Exhibit
12 Teva-Day-29.)

13 BY MR. MADDEN:

14 Q. I'll hand you Exhibit 29.
15 Have you seen that document before today?

16 A. Yes, I believe I've seen
17 this before today.

18 Q. This appears to be a report
19 prepared by GolinHarris which you
20 identified as a PR firm --

21 A. Correct.

22 Q. -- identifying advocacy
23 partners to enhance patient care,
24 correct?

1 A. Correct.

2 Q. And it's dated March of
3 2013, right?

4 A. Yes.

5 Q. You're the Fentora manager
6 at that time, right?

7 A. Correct. This would -- yep.

8 Q. Do you recall reviewing this
9 document?

10 A. Yes, I do remember looking
11 at this.

12 Q. All right. So let's look
13 at -- and I'm going to refer you to the
14 Bates numbers --

15 A. Okay.

16 Q. -- because that's what we
17 have on here.

18 A. Got it.

19 Q. Bates number ending in 648,
20 fourth page in, "Advocacy mapping need."

21 Do you see that?

22 A. Yes.

23 Q. There's some handwriting
24 next to the first bullet point. Do you

1 recognize that handwriting?

2 A. No.

3 Q. Okay. So that's not your
4 handwriting?

5 A. No.

6 Q. All right. Let's turn back
7 to Bates Number 499725, which is about
8 three-quarters of the way back.

9 MR. ANDRISANI: 725?

10 MR. MADDEN: Yeah. 499725.

11 BY MR. MADDEN:

12 Q. Do you have that?

13 A. 56, yes.

14 Q. Okay. So we've got a
15 PAINWeek overview page here.

16 Do you see this?

17 A. Yes.

18 Q. What is PAINWeek?

19 A. It's an annual conference on
20 the management of pain.

21 Q. Did you ever attend the
22 PAINWeek conference?

23 A. Yes.

24 Q. Where was that held?

1 A. Las Vegas.

2 Q. Was it the same time every
3 year?

4 A. Same time, same place.

5 Q. Where was it?

6 A. Las Vegas.

7 Q. Yeah, I know that. But
8 where in Las Vegas?

9 A. Oh. The Cosmopolitan Hotel.

10 Q. Okay. And what time of year
11 was it typically?

12 A. It's right when the kids go
13 back to school. So that's -- what's
14 that? Is that Labor Day?

15 Q. Fall?

16 A. Fall. Yeah, it always
17 coincided with when your kids went back
18 to school. Terrible time.

19 Q. Would Teva sponsor a booth
20 at that meeting?

21 A. Yes, we would.

22 Q. Would Teva also sponsor the
23 program itself?

24 A. We would support a booth and

1 educational programs during the
2 conference.

3 Q. So let's go to Bates Number
4 499739. There's a section provided by
5 GolinHarris that says, "Pain advocacy
6 influencers."

7 Do you see that?

8 A. Yes.

9 Q. And then it identifies
10 organizational leaders, correct?

11 A. Yes.

12 Q. What would this information
13 be used for by you or others within Teva
14 with regard to these pain advocacy
15 influencers?

16 MR. ANDRISANI: Objection.

17 THE WITNESS: Background for
18 who is attending the conference.

19 BY MR. MADDEN:

20 Q. I see. Would any of these
21 folks be targeted to become part of the
22 speakers bureau?

23 A. It wasn't a targeting list.

24 So if anybody on here was a speaker, they

1 would go through the speaker bureau
2 process.

3 Q. I see. So if someone like
4 you were attending this meeting or
5 convention, you would know who the pain
6 advocacy influencers were in case you ran
7 into one of them. Is that the purpose of
8 this report?

9 A. Yeah.

10 Q. Okay. So let's go then
11 to -- back in the back of this document,
12 499750.

13 A. Yes.

14 Q. There is a section provided
15 by the PR firm for Teva that says,
16 "Monitor for activity."

17 Have you seen this before?

18 A. I don't recall this page.

19 Q. Okay. Do you recognize any
20 of these names? Avi Israel, Andrew
21 Kolodny, Michael Schatman?

22 A. No. I haven't met -- I
23 recognize Andrew Kolodny, but I haven't
24 met or know any of them.

1 Q. Okay. Do you know why the
2 PR firm would prepare this information
3 regarding these people, these three
4 people to monitor for activity?

5 MR. ANDRISANI: Objection.

6 THE WITNESS: Can I look at
7 the pages before?

8 BY MR. MADDEN:

9 Q. Yeah, sure. And feel free
10 to read the bios that they prepared on
11 these three people, and I'll ask you some
12 questions.

13 A. I don't know why they would
14 flag them for monitor activities. It
15 looks like all of the, you know, people
16 within here had activity during the
17 conference.

18 Q. Let's look at the
19 description that they write for
20 Dr. Schatman. It says, "Dr. Schatman
21 feels special interest groups and
22 industry have tainted pain medicine, the
23 ability to treat patients effectively.
24 This includes universities, medical

1 schools, some pain groups, and pharma,
2 and is a KOL that Teva should monitor for
3 activity."

4 Do you see that?

5 A. Yes.

6 Q. Do you understand that
7 Dr. Schatman may be a critic of the
8 opioid industry as reflected here in this
9 document?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: Without
12 knowing him, it looks like that
13 could be how it's interpreted
14 here. But --

15 BY MR. MADDEN:

16 Q. So did Teva take this advice
17 and monitor his activity?

18 MR. ANDRISANI: Objection.

19 THE WITNESS: Not to -- not
20 to my knowledge.

21 BY MR. MADDEN:

22 Q. You had no part of that, did
23 you?

24 A. No.

1 Q. How about Dr. Kolodny? You
2 said you recognized his name. What do
3 you recognize about Dr. Kolodny?

4 A. Only his name because he's
5 been a pain management thought leader.

6 Q. And you understand
7 Dr. Kolodny has been critical of the
8 pharma industry with regard to opioid
9 promotion, don't you?

10 A. I don't know much about
11 Dr. Kolodny.

12 Q. Well, if we look at these
13 three summaries -- and if you need time
14 to do it -- these three people appear to
15 me from this page to be critics of the
16 opioid pharma industry. The public -- or
17 GolinHarris is giving you this
18 information and indicating these people
19 should be monitored for activity. Do you
20 know whether Teva took any steps to
21 monitor these critics?

22 MR. ANDRISANI: Objection.

23 THE WITNESS: Not to my
24 knowledge, no.

1 BY MR. MADDEN:

2 Q. Can you tell me why the
3 public relations firm would have
4 identified critics of Teva to be
5 monitored for activity?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: So I haven't
8 worked in PR. So we have a PR
9 agency. But part of what PR does
10 is look for things that could be
11 in, I don't know, the news or --
12 so I don't work in PR.

13 BY MR. MADDEN:

14 Q. All right. Fair enough.

15 (Document marked for
16 identification as Exhibit
17 Teva-Day-30.)

18 BY MR. MADDEN:

19 Q. Mr. Day, I'll hand you
20 Exhibit 30, which is a slide presentation
21 for PAINWeek dated May 29, 2014. Did you
22 have any role in preparing this slide
23 deck?

24 A. I would have been aware of

1 it. I'm not sure if I specifically
2 created this one.

3 Q. Would you have reviewed it?

4 A. Yes. I -- yes, I may have
5 reviewed it.

6 Q. All right. Page 3 of this
7 document references PAINWeek being
8 September 3 to 6, 2014, in Las Vegas,
9 right?

10 A. Yes.

11 Q. That's consistent with your
12 memory?

13 A. Yes.

14 Q. Did you attend that
15 particular PAINWeek meeting?

16 A. I believe so, yes.

17 Q. All right. And if we look
18 on that same page, it says, "PAINWeek is
19 now the largest U.S. pain conference and
20 is managed by Aventine Company, a medical
21 communications company primarily focused
22 on pain management education." Correct?

23 A. Yes.

24 Q. Did Teva have any role or

¹ relationship with regard to Aventine Co?

2 A. Aventine managed the
3 conference. So we would work with
4 Aventine to secure -- like they would set
5 up the booth and they would set up the
6 programs that I talked about earlier.

7 Q. Did Teva fund Aventine for
8 PAINWeek?

9 A. We funded -- we funded
10 PAINWeek, but when you funded PAINWeek,
11 you receive like a booth, a program.
12 Yes.

13 Q. Okay. And the page numbers
14 for this slide deck are in the top
15 right-hand. Let's go to Page 4. So
16 PAINWeek marketing activities are listed.
17 Corporate sponsorship. Is that
18 consistent with your memory? Teva
19 sponsored this meeting?

20 A. Yes.

21 Q. And then it says, "Pain
22 Matters screening and panel discussion."

23 Were you part of that?

24 A. Yes.

1 Q. That's because you were in
2 charge of Pain Matters, right?

3 A. Yes.

4 Q. Were you on the panel?

5 A. No.

6 Q. Who were the panel members?

7 Page 5 may jog your memory on that.
8 Those are the same people that we saw
9 that were discussed in the -- in the
10 documentary, right?

11 A. Yeah. In the invitation
12 that we looked at earlier.

13 Q. Okay.

14 A. Yes.

15 Q. And the objective that's
16 listed here is to shed light -- one of
17 the objectives is "to shed light on the
18 real impact of chronic pain through
19 personal stories and insight into the
20 individual and societal burden," correct?

21 A. Yes.

22 Q. Is that the burden of pain?

23 A. Yes.

24 Q. Did -- did any of these

1 panel members discuss the burden of abuse
2 and addiction?

3 A. No.

4 Q. Okay. Page 6 of this slide
5 deck, "Provide an industry overview on
6 the development of AD technologies
7 including Teva's proprietary AD
8 technology."

9 Do you see that?

10 A. Mm-hmm.

11 Q. Is that the abuse-deterrent
12 drug that you were managing?

13 A. Yes.

14 Q. And the speakers are who,
15 proposed speakers, rather?

16 A. Dr. Jeffrey Gudin,
17 Dr. Charles Argoff, and Dr. Melanie
18 Rosenblatt.

19 Q. Did you arrange for those
20 speakers for this conference?

21 A. Yes.

22 Q. And the purpose of having
23 them speak about the abuse-deterrent
24 formulation before it went to market was

1 what?

2 A. It wasn't specifically about
3 the formulation within the product. It
4 was about abuse-deterrant formulations in
5 general. There's over 22 that were in
6 development at the time.

7 Can we take a quick five
8 minutes?

9 Q. Absolutely.

10 MR. MADDEN: Let's do it.

11 THE VIDEOGRAPHER: Going off
12 the record at 2:46.

13 (Short break.)

14 THE VIDEOGRAPHER: We are
15 going back on record. Beginning
16 Media File Number 5. The time is
17 2:55.

18 BY MR. MADDEN:

19 Q. Mr. Day, I want to talk with
20 you now about your work with the
21 abuse-deterrant formulation Vantrela ER.

22 A. Okay.

23 (Document marked for
24 identification as Exhibit

1 Teva-Day-31.)

2 BY MR. MADDEN:

3 Q. I'll hand you in connection
4 with that Exhibit 31. Have you seen
5 Exhibit 31 before today?

6 A. Yes. I've seen it.

7 Q. All right. And the Vantrela
8 ER launch plan for 2014 is the title of
9 the document, correct?

10 A. Yes.

11 Q. Did you participate in
12 drafting this or review it?

13 A. Participated in drafting it.

14 Q. Let's go to Page 3 of this
15 exhibit which has an executive summary.

16 Do you see that?

17 A. Yes.

18 Q. On the executive summary,
19 the first numbered paragraph addresses
20 abuse and misuse of opioids, correct?

21 A. Yes.

22 Q. And it says, "The prevalence
23 of prescription opioid abuse and misuse
24 has increased in the past decade and

1 poses a serious public health issue."

2 Do you see that?

3 A. Yes.

4 Q. Do you agree with that?

5 A. Yes.

6 Q. It then says, "The
7 development of LA opioids formulated to
8 deter abuse is a priority for the FDA."
9 Correct?

10 A. Yes.

11 Q. And was Vantrela a
12 long-acting opioid?

13 A. Yes.

14 Q. Was Vantrela ER indicated --
15 if it had been marketed, indicated for
16 chronic pain?

17 A. Yes. Its indication was for
18 mild to moderate chronic pain.

19 Q. All right. If we go to Page
20 5 of this document, there is a section
21 regarding -- or rather statistics
22 regarding opioid abuse and misuse that
23 have five bullet points.

24 Do you see that?

1 A. Yes.

2 Q. Did you participate in
3 drafting that section of this launch
4 plan?

5 A. No.

6 Q. Where did that data come
7 from?

8 MR. ANDRISANI: Objection.

9 THE WITNESS: I'm not sure
10 where the bullet points came from.

11 The source reference is referring
12 to the pie charts above it.

13 BY MR. MADDEN:

14 Q. Okay. If we look above the
15 bullet points, second sentence above the
16 bullet points, it says, "The societal
17 impact of abuse and misuse has led to
18 numerous detrimental health outcomes,
19 creating the search for answers on how to
20 minimize this issue."

21 Do you see that?

22 A. Yes.

23 Q. And then there are
24 statistics associated with the opioid

1 epidemic, correct?

2 A. Yes.

3 Q. And the last bullet point
4 says, "Nonmedical use of prescription
5 pain medications costs health insurers
6 upwards of 72.5 billion annually in
7 direct healthcare costs."

8 Do you see that?

9 A. Yes.

10 Q. Do you know what the number
11 is for public entities?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: No, I do not.

14 BY MR. MADDEN:

15 Q. Do you understand that the
16 litigation about which we are here today,
17 about which I'm asking you questions is
18 litigation brought by public entities to
19 recover for the opioid epidemic?

20 A. Yes.

21 Q. How -- given the statistics
22 that are listed here regarding the opioid
23 epidemic, how would Vantrela ER help with
24 regard to that issue?

1 A. Well, as I mentioned
2 earlier, it could be part of the
3 solution.

4 Abuse-deterrent opioids in
5 their nature are formulated to be tamper
6 deterrent. A lot of times opioids can be
7 abused by being crushed or snorted or
8 injected. The formulation that we were
9 exploring prevented that.

10 And when they're crushed or
11 they're snorted, they're injected, that
12 can lead to respiratory depression.

13 Q. Which can lead to death,
14 correct?

15 A. Which can lead to death.

16 Q. If we look at Page 6 that
17 goes along with those statistics that are
18 on Page 5, we see two graphs. One graph
19 has, "Drug overdose death rates in the
20 U.S. have more than tripled since 1990."

21 Do you see that?

22 A. Yes.

23 Q. And the graph below that
24 says, "For every one death there are 32

¹ emergency visits for misuse and abuse,
² 130 people who are abuse or are
³ dependent, and 825 nonmedical users."

5 A. Yes.

6 Q. And that data relates to the
7 use of opioids, correct?

8 A. These data in the graph
9 above, I'm not sure if it's specific to
10 opioids or overdose of drugs in general.

11 Q. Let take --

12 A. Yeah. Again, the last --

13 Q. Let's say since -- let's say
14 since 2000. Actiq was on the market in
15 2000, wasn't it? Or was that 2008?

16 A. I don't know.

17 Q. That's a bad question.

18 Strike it.

24 MR. ANDRISANI: Objection.

6 BY MR. MADDEN:

7 Q. Well, the Vantrela ER launch
8 plan document includes this data to tout
9 the value of a tamper-resistant opioid,
10 correct?

11 A. I think it shows the
12 potential value or a need, yeah.

13 Q. So we talked about Teva's
14 reaction to the opioid epidemic. One of
15 the reactions was to create this
16 tamper-resistant opioid, correct?

17 A. Yes.

18 Q. But then it made the
19 economic decision not to market the drug,
20 correct?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: The decision
23 to market Vantrela ER was -- I
24 think there was more in that than

1 just a financial decision.

2 BY MR. MADDEN:

3 Q. What else was taken into
4 consideration by you and others who are
5 on the Vantrela team?

6 MR. ANDRISANI: Objection.

7 THE WITNESS: So I think
8 when you're looking at launching a
9 product, you know, you look at
10 different factors, one of those
11 being the current state, like for
12 example, of approval with managed
13 care plans, the -- the time that
14 the FDA grants you for
15 exclusivity.

16 And also within that time
17 period there was a year and a half
18 delay. There was an additional
19 abuse-deterrent hydrocodone
20 formulation that was launched
21 ahead of us that wasn't previously
22 to be launched.

23 So to my understanding there
24 were also legal concerns while

1 there was a hydrocodone
2 abuse-deterrent formulation and
3 then Vantrela, that they could be
4 the same, and there may not even
5 be a legal pathway to launch the
6 product. So it is multifactorial.

7 BY MR. MADDEN:

8 Q. Teva pain strategy team,
9 were you on that team?

10 (Document marked for
11 identification as Exhibit
12 Teva-Day-32.)

13 BY MR. MADDEN:

14 O. Exhibit 32.

15 A. This looks to be a global
16 science -- excuse me, global scientific
17 communications, which falls under
18 medical. I guess they were calling it
19 pain strategy team. There's a divide
20 between medical and marketing. So I
21 wouldn't have had direct input or have
22 created anything in this.

23 Q. At Page 7 in Exhibit 32,
24 there's reference to Study 1085, Abuse

1 Liability Manuscript?

2 A. Yes.

3 Q. Are you familiar with that
4 study?

5 A. Yes, I am familiar with
6 these studies.

7 Q. Okay. Were those studies
8 published?

9 A. I believe these were the
10 drug liking studies that -- yes, I
11 believe they were published.

12 Q. What do you mean when you
13 say "drug liking studies"?

14 A. It's a study methodology
15 that medical employs during one of these
16 protocols to assess the abuse potential
17 of a product. It's -- I mean, it's
18 really more of a question for medical
19 than for marketing. But it's a
20 methodology that they use.

21 (Document marked for
22 identification as Exhibit
23 Teva-Day-33.)

24 BY MR. MADDEN:

1 Q. Okay. I'm handing you
2 Exhibit 33. Did you see that document in
3 connection with your work on Vantrela?
4 It's titled, "Prescription Drug Abuse &
5 Alliance to Prevent the Abuse of
6 Medicines."

7 A. I can't recall this
8 document.

9 Q. Did you have any authorship
10 in it?

11 A. No.

12 Q. And I think you told me
13 earlier that you were not on the alliance
14 committee; is that right?

15 A. That's correct.

16 Q. Exhibit 34 is a patient
17 exploration document. Are you familiar
18 with that document?

19 (Document marked for
20 identification as Exhibit
21 Teva-Day-34.)

22 THE WITNESS: Not previous
23 to this. I'm viewing it now.

24 BY MR. MADDEN:

1 Q. Okay. All right. So it
2 appears to me, from looking through this
3 document, that CEP-33237 was another name
4 for Vantrela. Are you familiar with
5 that?

6 A. Yes.

7 Q. Okay. And this appears to
8 be -- have been a study submitted to Teva
9 from Pinnacle Research Group LLC in
10 Perryville, Missouri. Did you have any
11 interaction with them?

12 A. No. This was in 2011. I
13 would have been in field. I wasn't in
14 the marketing role.

15 Q. When you were director of
16 Vantrela, was this study ever presented
17 to you?

18 A. No, I've never seen this.

19 (Document marked for
20 identification as Exhibit
21 Teva-Day-35.)

22 BY MR. MADDEN:

23 Q. Exhibit 35. Have you seen
24 this document before?

1 A. I can't recall. This looks
2 to be a slide that may have been included
3 in a presentation to management. But I
4 had not presented this slide.

5 Q. All right. So you are the
6 director of Vantrela.

7 A. Mm - hmm.

8 Q. And part of the team that
9 decided not to launch Vantrela.

10 A. Correct.

11 Q. And we had this slide that
12 talks about reasoning around that
13 decision, correct?

14 A. Correct.

15 Q. The first bullet point --
16 well, first of all, it's titled Teva's
17 current internal plan for Vantrela,
18 right?

19 The first bullet point says,
20 "In event Vantrela cannot be divested,
21 Teva does not plan to launch the
22 product."

23 A. Okay.

24 Q. Do you see that?

1 A. Yes.

2 Q. Was there a plan to sell
3 Vantrela to another company?

4 A. Yes.

5 Q. That's the divestment that
6 is being discussed here?

7 A. Correct.

8 Q. Had that been the plan all
9 along?

10 A. No.

11 Q. When did that plan come into
12 effect?

13 A. When we were assessing
14 options after the year and a half delay.

15 Q. Talk to me about that year
16 and a half delay. You said that FDA
17 delayed a year and a half to approve the
18 drug, correct?

19 A. Mm-hmm.

20 Q. Yes?

21 A. Yes.

22 Q. And then the drug would have
23 only had three years of patent
24 protection?

1 A. Correct. So a year and a
2 half left.

3 Q. Why wouldn't the three years
4 have run from approval?

5 A. The -- there was another --
6 the timing, we have to go back and look
7 at the timing. But there was another
8 abuse-deterrent hydrocodone formulation
9 already on the market. Its exclusivity
10 would have ended, thus entering a generic
11 version into the market.

12 Q. So it -- so it was patent
13 protection for a competitor that would
14 have caused the year-and a half problem
15 for the company, right?

16 A. Yes.

17 Q. It wasn't patent -- losing
18 patent protection for your drug, was it?

19 A. No.

20 Q. Okay. Second bullet point
21 is, "Key reasons include greater expenses
22 expected to be associated with Vantrela
23 versus its sales potential, particularly
24 given Teva's near-term financial

1 constraints."

2 Do you see that?

3 A. Yes.

4 Q. Was an analysis done as to
5 what it would cost to detail Vantrela?

6 A. There was analysis on the
7 field sales to detail it, yes. 240
8 full-time equivalence or representatives.

9 Q. Okay. So the cost
10 outweighed the benefit if you were going
11 to run -- if somebody else was going to
12 go generic with a similar product in a
13 year and a half. Is that what it came
14 down to?

15 MR. ANDRISANI: Objection.

16 THE WITNESS: That was part
17 of it. And Teva was cutting costs
18 dramatically.

19 BY MR. MADDEN:

20 Q. So let's go to the last
21 bullet point. It says, "Teva's interest
22 in opioid market has declined
23 significantly. Sociopolitical sentiment
24 towards opioids has continued to

1 decline."

2 Do you see that?

3 A. Yes.

4 Q. Do you understand that to
5 mean that public political sentiment
6 towards opioids was not favorable?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: I would say
9 that it was not favorable.

10 BY MR. MADDEN:

11 Q. What's that last bullet
12 point referring to, the two IR AD
13 opioids?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: We had
16 intended on using the
17 abuse-deterrent technology in
18 Vantrela in other immediate
19 release formulations. It -- we
20 could never get it to work in
21 clinical trials.

22 BY MR. MADDEN:

23 Q. So Fentora would be an
24 immediate release product, right?

1 A. Fentora is a transmucosal
2 immediate release fentanyl.

3 Q. Yes, right. And Vantrela
4 would be a long-acting opioid, not an
5 immediate release opioid, right?

6 A. Yes.

7 Q. So there were studies or --
8 or attempts to create an abuse-deterrant
9 immediate release opioid, right?

10 A. Right. Not fentanyl based.

11 Q. What about the fentanyl
12 patch, was that developed?

13 A. It was not.

14 Q. Did you ever see that?

15 A. There was a program. I
16 didn't see it. It was never developed.
17 They couldn't get it to work.

18 Q. So at the -- so at the time
19 that the Pain Matters campaign was
20 running by you and you were overseeing
21 Vantrela, it appears to me that Teva was
22 promoting opioids in general for chronic
23 use even though it was making economic
24 decisions against Vantrela which was for

1 chronic use, am I right about that?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: No. I

4 wouldn't say we were promoting
5 opioids at the time. The Pain
6 Matters campaign was promoting
7 education and information about
8 pain management. It wasn't
9 specific to opioids or products.

10 BY MR. MADDEN:

11 Q. Right. We looked at the
12 Pain Matters website, correct?

13 A. Yeah.

14 Q. It mentions chronic pain,
15 right?

16 A. Mm-hmm.

17 Q. It mentions opioids, right?

18 A. Mm-hmm.

19 Q. Yes on both of those?

20 A. Yes.

21 Q. It doesn't mention any other
22 drugs used to treat chronic pain other
23 than opioids, am I correct?

24 A. I -- I believe as a -- I

1 can't recall as I said earlier. But I
2 believe there's additional information on
3 therapies like acupuncture,
4 acetaminophen. There is information on
5 opioids, yes. But I think there's other
6 information as well about the entire
7 management of pain.

8 Q. At the very beginning of the
9 day you referred to the Pain Matters
10 campaign as unbranded marketing, right?

11 A. Mm-hmm. Yes.

12 Q. Yes. Unbranded meaning it's
13 not associated with Fentora or some other
14 branded drug, correct?

15 A. Correct.

16 Q. But it is marketing, right,
17 it is promotion?

18 MR. ANDRISANI: Objection.

19 THE WITNESS: It -- yes, it
20 is within marketing.

21 BY MR. MADDEN:

22 Q. Sure. It is a promotional
23 piece that doctors and patients were
24 directed to based on media as we saw in

¹ the report that was sent to you, right?

2 MR. ANDRISANI: Objection.

3 THE WITNESS: I don't know

4 if I would characterize it as

5 promotion. I always characterized

6 it more as education and

7 information.

8 BY MR. MADDEN:

9 Q. But you called it unbranded
10 marketing, right?

11 MR. ANDRISANI: Objection,
12 asked and answered

13 THE WITNESS: Yes

14 BY MR MADDEN.

15 Q. Okay. And that unbranded
16 marketing, if a patient or a doctor saw
17 it and went to the website, they could
18 read about opioid management for chronic
19 pain, right?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: They could

22 read about that and other things.

23 BY MR. MADDEN:

24 Q. Right.

1 (Document marked for
2 identification as Exhibit
3 Teva-Day-36.)

4 BY MR. MADDEN:

5 Q. Exhibit 36. This is an
6 e-mail dated May 24, 2017 --

7 MR. MADDEN: I'm sorry.

8 MR. ANDRISANI: That's okay.

9 Thank you.

10 BY MR. MADDEN:

11 Q. The string begins with --
12 well, on the first page there's an e-mail
13 to you from Joseph Grotzinger, correct?

14 A. Yes.

15 Q. Who is he?

16 A. He was a -- he was a
17 brand -- in marketing, a brand director
18 in marketing. Joseph Grotzinger. He was
19 in -- I believe he was in the respiratory
20 division as well.

21 Q. Mr. Grotzinger forwards you
22 an e-mail from someone outside the
23 company and says, "I received this
24 request from a former colleague, Bob

1 Verscharen who is consulting with a
2 development company working on the
3 patented abuse-deterrent technology.
4 They also claim there is some
5 environmental" -- "environmental benefit
6 to this technology as it prevents the
7 drug from entering the water supply."

8 Do you see that?

9 A. Yes.

10 Q. Was that one of the
11 considerations you had in -- in
12 overseeing the abuse-deterrent version,
13 that it would somehow keep it out of the
14 water supply?

15 A. I didn't develop the
16 abuse-deterrent technology. I don't know
17 if that was something it could do or not
18 do. I -- I wasn't aware of that being a
19 feature of the technology we were
20 developing.

21 Q. Fair enough. You respond in
22 May of '17, "Thanks for sending this
23 over. We are no longer developing
24 abuse-deterrent drugs. The program has

1 been discontinued."

2 Do you see that?

3 A. Yes.

4 Q. And it was discontinued for
5 the reasons we previously discussed,
6 right?

7 A. Correct.

8 (Document marked for
9 identification as Exhibit
10 Teva-Day-37.)

11 BY MR. MADDEN:

12 Q. Exhibit 37 is a slide
13 presentation. It does not appear to be
14 dated. But my question for you is, have
15 you seen this before, or did you have any
16 role with putting it together?

17 A. I mean, some of the slides
18 look familiar. I'm not sure if I put
19 together this exact thing, this
20 presentation.

21 Q. Let's look at some of the
22 slides then and see if you recognize
23 them.

24 Slide 48 in Exhibit 37.

1 A. The numbers on the bottom?

2 Q. I hope so.

3 A. The page number on the
4 bottom? Okay. Okay.

5 Q. This slide entitled "Drug
6 Diversion" in Exhibit 37, have you seen
7 that before?

8 A. I can't recall this slide.

9 Q. How about the slide at Page
10 49. Have you seen that one before?

11 A. No. I mean, these look to
12 be similar data to what we looked at
13 previously in the Vantrela plan, but I
14 can't recall the specific dataset or this
15 slide.

16 Q. How about the slide at Page
17 50?

18 A. I can't recall having
19 created this. I think I've seen this
20 before.

21 Q. Okay. Remember earlier we
22 were talking about overdose deaths in the
23 U.S. --

24 A. Yes.

1 Q. -- and how they've gone
2 up --

3 A. Yes.

4 Q. -- increasingly over the
5 last couple decade?

6 A. Yes.

7 Q. And do you see that pain
8 relievers are the highest growth numbers
9 when compared to tranquilizers,
10 stimulants, and sedatives on this page?

11 A. Yes. That's what I was
12 referring to earlier with -- I didn't
13 know what else was in that dataset.

14 Q. Going back to Exhibit 37,
15 Page 48, the pie chart that deals with
16 where abusers are getting their opioids.

17 A. Mm-hmm.

18 Q. The data that's contained in
19 here, was that brought to your attention
20 in connection with the development of the
21 abuse-deterrent version, Vantrela?

22 A. It's contained within here.

23 But I can't recall specifically
24 developing, or discussing the reasons for

1 the data.

2 MR. MADDEN: Mr. Day, some
3 of these lawyers may have some
4 questions for you. So I'm going
5 to pass you to these other
6 lawyers.

7 THE WITNESS: Okay.

8 THE VIDEOGRAPHER: Going off
9 the record. The time is 3:22.

10 (Brief pause.)

11 THE VIDEOGRAPHER: We are
12 going back on the record.

13 Beginning of Media File Number 6.
14 The time is 3:24.

15 - - -

16 EXAMINATION

17 - - -

18 BY MR. FAES:

19 Q. Good afternoon, Mr. Day. My
20 name is Andy Faes, and I also have some
21 additional questions and some follow-up
22 questions for you today.

23 A. Okay.

24 Q. I also represent the

1 plaintiffs in this case. Do you
2 understand that?

3 A. Yes, I do.

4 Q. I'll try to be brief and try
5 not to re-cover old ground. The nature
6 of follow-up questions is I may have to
7 ask a few questions over again --

8 A. Okay.

9 Q. -- just to ground you to
10 where we are in space and time. Okay?

11 A. Sounds good.

12 Q. Now, when you first joined
13 Cephalon, you joined as a sales training
14 manager in approximately July of 2007; is
15 that right?

16 A. Correct.

17 Q. And you eventually became a
18 senior sales training manager, right?

19 A. I did.

20 Q. How many -- at its peak, how
21 many people were in the sales training
22 department?

23 A. I would say five.

24 Q. Okay. And one of those

1 persons was the individual we discussed
2 earlier who you trained, right?

3 A. Yes.

4 Q. What was her name again?

5 A. Kate Reedy.

6 Q. While were you sales
7 training manager from approximately 2007
8 through the end of 2009, early 2010, you
9 would have been responsible for training
10 sales reps who called on doctors
11 regarding the Fentora product all across
12 the country, right?

13 A. Yes.

14 Q. And that would have included
15 the state of Ohio, right?

16 A. Yes.

17 Q. And you became a sales
18 manager for the Mid-Atlantic region in
19 early 2010; is that right?

20 A. Yes.

21 (Document marked for
22 identification as Exhibit

23 Teva-Day-38.)

24 BY MR. FAES:

1 Q. I'm going to hand you what's
2 been marked as Exhibit 38. This is from
3 Teva's files. You can see, it's -- let
4 me start over.

5 This is a document from
6 Teva's files. You can see at the top
7 it's labeled "2009 PCS Mid-Atlantic
8 area."

9 Do you see that at the top?

10 A. Yes.

11 Q. And this would have been --
12 2009 would have been right before you
13 became the Mid-Atlantic manager, right?

14 A. Yes.

15 Q. And if you look at the
16 graphic, you can see over on the
17 left-hand side, it appears that part of
18 Ohio was actually included in the
19 Mid-Atlantic territory, right?

20 A. Yes.

21 Q. Does this refresh your
22 recollection about whether or not at
23 least part of Ohio was in your territory
24 during the time that you were the

1 Mid-Atlantic manager?

2 A. Yes.

3 Q. So is this an accurate
4 representation of your territory that
5 included Ohio during the time you were
6 Mid-Atlantic sales manager in 2010 and
7 2011?

8 A. I'm not sure if this was the
9 exact territory cut in 2010 and 2011. It
10 looks to be accurate, yes, and parts of
11 Ohio.

12 Q. But just to be clear, you
13 now -- strike that.

14 Just to be clear, you would
15 agree with me now that when you were
16 Mid-Atlantic sales manager in 2010 and
17 2011, your territory would have included
18 at least part of Ohio, correct?

19 A. Yes.

20 Q. And actually, if you look on
21 the second page of this, you can actually
22 see with a little bit more detail the
23 area of Ohio that would have been
24 included in your territory, right?

1 A. Yes.

2 Q. And does that appear to be
3 roughly accurate to you?

4 A. Yes.

5 Q. Okay. You can set that
6 document aside.

7 And after you were the
8 Mid-Atlantic sales manager, you later
9 became, in addition to a manager of other
10 products, the Fentora product manager in
11 2012, right?

12 A. Yes, I did.

13 Q. And as part of your job as
14 the Fentora product manager, you would
15 have been responsible for developing
16 marketing, sales, and training materials
17 for the Fentora product, right?

18 A. Yes.

19 Q. And those materials would
20 have been intended for distribution to
21 Cephalon and Teva employees all across
22 the country, right?

23 A. Correct.

24 Q. And in fact, the materials

1 that you worked on were distributed all
2 across the country, right?

3 A. Yes. The sales training
4 materials were used to train the
5 representatives across the country, yes.

6 Q. And that would include the
7 state of Ohio, correct?

8 A. Yes.

9 Q. Okay. In 2016 you changed
10 roles again; is that accurate?

11 A. Yes.

12 Q. And at least one of your --
13 I don't want to, you know, fight about on
14 your specific title was --

15 A. I had a lot of roles.

16 Q. At least one of your titles
17 in 2016, we saw, was as the director of
18 abuse-deterrent opioids, right?

19 A. Yes, correct.

20 Q. And part of your duties
21 actually, I think predating 2015, was to
22 work on the Pain Matters website, right?

23 A. Yes.

24 Q. And we looked at some

1 excerpts from the Pain -- the Pain
2 Matters website which we marked as
3 Exhibit 26. Do you remember that?

4 A. Yes.

5 Q. You'd agree with me that
6 that website is available to be accessed
7 by patients or doctors or anyone with web
8 access all across the country, right?

9 A. Yes.

10 Q. And that includes the state
11 of Ohio, right?

12 A. Yes, it does.

13 Q. Now, I think we talked about
14 during the -- well, let me back up.

15 Do you recall when the Pain
16 Matters website was initially launched?
17 Was it around 2015?

18 A. I can't recall the exact --
19 that sounds about right as a time frame.
20 I can't recall the specific launch date.

21 Q. Okay. I think you testified
22 earlier that during the Pain Matters
23 campaign, at least at the start of it,
24 you weren't -- I think you said that you

1 weren't marketing any opioids, correct?

2 A. I think there was a time
3 when Fentora was being marketed and the
4 Pain Matters campaign had launched, and I
5 think that was like a six-month time
6 frame. And then Fentora was not
7 promoted, if memory -- so there was, I
8 think, a small window in there.

9 Q. And so when you say
10 "marketed," what you're -- what you're
11 really meaning is it wasn't promoted,
12 meaning there was no active sales force,
13 right?

14 A. Correct.

15 Q. But Teva and Cephalon
16 continued to sell both the Actiq and the
17 Fentora products the entire time that the
18 Pain Matters program was running, right?

19 A. They continued to distribute
20 them, not through promotion with field
21 sales.

22 Q. So it continued to be
23 available for sale --

24 A. Yes, yes.

1 Q. -- during the entire time
2 that the Pain Matters program ran,
3 correct?

4 A. Yes, it did.

5 Q. And it continues to be
6 available today, right?

7 A. Yes.

8 Q. And during at least part of
9 that time that the Pain Matters program
10 was running, Teva was also selling
11 generic opioid products, right?

12 A. I wasn't in charge of the
13 generic portfolio. I -- I believe so.
14 But I don't know what their portfolio
15 consisted of.

16 Q. But you understood as a --
17 as an employee of Teva that in around
18 2016, Teva acquired Actavis and that
19 included a portfolio of opioids, right?

20 A. I didn't know Actavis's
21 specific portfolio of products. I knew
22 that -- I really didn't have much
23 interaction with the generic side. The
24 company was very siloed. You know,

1 specialty was the side of the
2 organization that I resided on.

3 So I knew there was an
4 integration with Actavis, but I didn't
5 know what products Actavis brought in
6 relation to what Teva already had on the
7 generic side.

8 Q. So for example, as part of
9 your responsibilities as director of
10 abuse-deterrent opioids, you worked on
11 the Vantrela ER product --

12 A. Yes.

13 Q. -- which is a hydrocodone
14 product, right?

15 A. Yes.

16 Q. So did you know that Teva
17 actually had a non-abuse-deterrent
18 hydrocodone generic program that they
19 were selling or not?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: I didn't know
22 if there were versions or if there
23 were sales associated with that.

24 BY MR. FAES:

1 Q. So as -- as part of your
2 job, you never looked at sales of Teva's
3 existing nonabuse-deterring hydrocodone
4 product in any of your sales or marketing
5 analysis related to the Vantrela ER
6 product?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: I -- I don't
9 think in relation to Teva. We
10 looked at hydrocodone. But I
11 don't specifically, like if Teva
12 had a version, I think Teva had
13 versions of hydrocodone and
14 oxycodone, but I don't know the
15 specifics behind when they were
16 launched, how they were acquired
17 and --

18 BY MR. FAES:

19 Q. Okay. So, it's fair to say
20 that if Teva generic was actually selling
21 millions of dollars worth of opioid
22 products, generic opioid products during
23 the Pain Matters campaign, you would have
24 no knowledge of that?

1 A. No. I didn't see any
2 reports.

3 Q. And as you sit here today,
4 you have no knowledge of -- of how many
5 generic opioid products Teva was selling
6 during the Pain Matters campaign; is that
7 accurate?

8 A. No. That's accurate, yes.

9 Q. Okay. If I could have you
10 go back to Exhibit Number 26, which is
11 the web capture.

12 A. Yep.

13 Q. And I'm going to have you go
14 to -- it's six pages in. The bottom is 1
15 of 4.

16 A. Is it this one?

17 Q. Yes. Six pages in. I'm
18 having you go to this page.

19 A. Okay.

20 Q. It says 1 of 4 at the
21 bottom, but it's the sixth page in?

22 A. Okay.

23 Q. So, Mr. Day, we're looking
24 at Exhibit Number 26 which is an archived

1 web capture, I'll represent to you it's
2 from 2015, of the Pain Matters website.
3 Do you see that? At the top there it
4 says, "Teva Pharmaceuticals and pain
5 management"?

6 A. Yes.

7 Q. And actually down, if you
8 look at the bottom, it says
9 archiveweb.org and there's a 2015 year in
10 there with a date.

11 A. Yes.

12 Q. Do you see that?

13 A. Yes.

14 Q. If you look at the second
15 paragraph from the top it states, "As
16 part of our ongoing commitment to support
17 healthcare professionals and patients
18 dealing with chronic pain, we were
19 developing an innovative abuse deterrence
20 technology platform to address the
21 challenges of opioid abuse and misuse."

22 Do you see that?

23 A. Yes.

24 Q. That's return -- that's

1 referring to the Vantrela ER product that
2 you had in development at this time,
3 right?

4 A. Correct. And there were
5 other abuse-deterrant formulations in
6 development too.

7 Q. Right. There were at
8 least -- there were at least two other
9 formulations that you had in development,
10 right?

11 A. Yes. Immediate release
12 oxycodone and immediate release
13 hydrocodone.

14 Q. That Vantrela ER was the
15 furthest along in the FDA approval
16 process at this time, right?

17 A. Yes, correct.

18 Q. And, in fact, some of your
19 projections indicated that the Vantrela
20 ER product could launch as soon as 2016,
21 right, if it -- if it got approval?

22 A. That sounds accurate. I'd
23 have to go back and look at the business
24 plans, but --

1 Q. And I think earlier you
2 testified that Teva terminated funding
3 for the Pain Matters product about a year
4 ago, right, so early -- early 2017?

5 A. I think it -- yeah, in '17.

6 Q. And early 2017, isn't that
7 about the same time that Teva made the
8 announcement that they would not be
9 selling or launching the Vantrela ER
10 product?

11 A. I am not sure they ever made
12 a public announcement.

13 Q. Would you agree that that's
14 about the time that Teva made the -- the
15 decision internally to not launch the
16 Vantrela ER product?

17 A. Based on that e-mail that we
18 saw earlier, yes.

19 Q. Okay. You can set that
20 aside.

21 A. Yep.

22 Q. Now, I'm going to go back in
23 time again, to when you first joined the
24 organization Cephalon at that time --

1 A. Okay.

2 Q. -- in July of 2017 as a
3 sales training manager, right?

4 A. Okay.

5 Q. And we talked earlier that
6 one of your responsibilities in that role
7 would have been to train the sales force
8 on how to promote the Fentora product,
9 right?

10 A. Yes.

11 Q. And we discussed earlier
12 that one of the modules, learning
13 modules, was actually on the RiskMAP,
14 right?

15 A. Yes.

16 (Document marked for
17 identification as Exhibit
18 Teva-Day-39.)

19 BY MR. FAES:

20 Q. I'm going to hand you what's
21 been marked Exhibit Number 39 to your
22 deposition.

23 A. Yep.

24 Q. And Exhibit Number 39 in

1 front of you, this is actually the
2 learning module that you would have used
3 to train Fentora sales reps on the
4 RiskMAP, right?

5 A. Yes, this looks to be the
6 approved version.

7 Q. And it looks, if you see the
8 copyright date down towards the bottom
9 there, it actually says copyright 2007.
10 So this probably would have been the
11 version that you would have utilized upon
12 your initial hire at Cephalon, correct?

13 MR. ANDRISANI: Objection.

14 THE WITNESS: This may be
15 the specific version. There's no
16 tracking number at the bottom. So
17 I don't know if this is a draft or
18 a final version.

19 But this looks to be, yes,
20 like one of the first RiskMAP
21 modules that I would have seen
22 upon my hire.

23 BY MR. FAES:

24 Q. Okay. And you would

1 actually be very familiar with this
2 document, right?

3 A. Yes, very familiar --

4 Q. And this was a document --

5 A. Yeah, I mean it was a long
6 time ago, so...

7 Q. So you would have been very
8 familiar with this document at least in
9 2007 and 2008 and you would have been
10 using this to actually train Fentora
11 sales reps as part of your job, right?

12 MR. ANDRISANI: Objection.

13 THE WITNESS: So this would
14 go out to the representatives.

15 They would study the module and
16 take the exam based on that. I
17 wouldn't train off of the module
18 so I wouldn't know specifically
19 every word and train from the
20 module itself. This was -- does
21 that make --

22 BY MR. FAES:

23 Q. Sure, sure. So you --

24 A. Yeah.

1 Q. -- you would agree that it
2 was part of your responsibilities as the
3 sales training manager to know this
4 material, right?

5 A. Yes.

6 Q. If you look at Page Number 1
7 of this, which I think is actually the
8 third page in, you see under Section 4
9 that there's -- under Section 4, there's
10 goals and objectives of the Fentora
11 RiskMAP. Do you see that?

12 A. Yes.

13 Q. And the number one goal is
14 that Fentora should -- should be used
15 only by opioid-tolerant patients with
16 cancer.

17 Do you see that?

18 A. Yes.

19 Q. You would agree with me that
20 breakthrough -- breakthrough pain --
21 strike that.

22 You would agree with me that
23 breakthrough pain without cancer was not
24 indicated Fentora at the time you joined

1 Cephalon in 2007, right?

2 MR. ANDRISANI: Objection.

3 We've been over this.

4 BY MR. FAES:

5 Q. Is that right?

6 A. Breakthrough pain in
7 patients with cancer is how it was
8 indicated.

9 Q. Right. And breakthrough
10 pain -- breakthrough pain without cancer
11 is not indicated, right?

12 A. Correct.

13 Q. In fact, as we sit here
14 today in 2018, it's never been indicated
15 for Fentora, right?

16 A. No, it hasn't.

17 Q. So you would agree with me
18 that marketing or promoting Fentora for
19 breakthrough pain without cancer would be
20 off-label, right?

21 MR. ANDRISANI: Objection.

22 THE WITNESS: Can -- can
23 you --

24 BY MR. FAES:

1 Q. You would agree with me that
2 marketing or promoting Fentora for
3 breakthrough pain without cancer would be
4 considered off-label, right?

5 A. Yes.

6 Q. And you understood during
7 your time at Cephalon, that marketing
8 either Actiq or Fentora off-label, would
9 be illegal, right?

10 A. Yes.

11 Q. If you go to Page 17 of this
12 document, it actually breaks down the
13 goals again, goals and objectives of the
14 Fentora RiskMAP. Do you see that?

15 A. Yes, I do.

16 Q. And again, the number one
17 goal is Fentora should be used only in
18 opioid-tolerant patients with cancer.

19 Do you see that?

20 A. Yes.

21 Q. And do you see under the
22 subobjectives it says, "Educate patients
23 that Fentora should not be used in opioid
24 nontolerant patients," right?

1 A. Yes.

2 Q. And it also says, "To
3 educate patients, that Fentora should be
4 used only by individuals with cancer who
5 are opioid tolerant."

6 Do you see that?

7 A. Yes.

8 Q. And the third point is "to
9 educate pharmacists and other healthcare
10 personnel of the importance of Fentora
11 being prescribed, distributed and used
12 only by opioid-tolerant patients with
13 cancer."

14 Do you see that?

15 A. Yes.

16 Q. And do you notice that
17 Points 2 and 3 specifically reference
18 patients with cancer. But Point 1, that
19 educate physicians that Fentora should be
20 used in opioid nontolerant patients,
21 doesn't mention that it shouldn't be used
22 by patients with only -- only be used by
23 patients with cancer, correct?

24 MR. ANDRISANI: Objection.

5 BY MR. FAES:

6 Q. But you'd agree at least
7 according --

8 A. The header says,
9
-0 "Opioid-intolerant patients with cancer."
-1 It's just further kind of breaking that
-2 down, because you have to explain why
-3 they need to be opioid tolerant, why they
-4 need to have cancer, because as we talked
-5 about earlier, if you're not opioid
-6 tolerant, it could lead to respiratory
depression, which could lead to death.

17 Q. Now, at some point you were
18 made aware that Cephalon was actually
19 seeking an expanded indication for
20 Fentora to be used in opioid-tolerant
21 patients with breakthrough pain without
22 cancer, right?

23 A. Yes.

24 Q. In fact, there were people

1 at Cephalon that really wanted to be able
2 to sell it to -- to sell Fentora to
3 patients without cancer, right?

4 MR. ANDRISANI: Objection.

5 THE WITNESS: I don't -- I
6 can't speak on other people's
7 behalf. There was a developmental
8 program through medical to explore
9 that.

10 BY MR. FAES:

11 Q. As part of the sales force
12 as the sales training manager, you
13 actually prepared for the possibility of
14 getting that expanded indication for the
15 use of Fentora -- Fentora in
16 opioid-tolerant patients without cancer,
17 right?

18 A. The only recollection that I
19 have is from the module that we saw
20 earlier and reviewed.

21 Q. Okay. But in fact, didn't
22 you go to a war game simulation in early
23 2008 of what that might look like?

24 A. I may have. I can't recall

1 if I had gone to a war game simulation.

2 (Document marked for
3 identification as Exhibit
4 Teva-Day-40.)

5 BY MR. FAES:

6 Q. I'm going to hand you what's
7 been marked as Exhibit Number 40 to your
8 deposition.

9 A. Okay.

10 MR. ANDRISANI: Thank you.

11 BY MR. FAES:

12 Q. And this is another document
13 from Teva's files. And you see this is
14 an e-mail and attachment, and the e-mail
15 is dated April 15, 2008.

16 Do you see that?

17 A. Yes.

18 Q. And you see in the second
19 line, you're included -- Day, Matthew --
20 as one of the recipients of this e-mail?

21 A. Yes.

22 Q. And you see the first line
23 that states, "Please find below a
24 briefing booklet for the Fentora World

1 Cup (war games) meeting on Monday 4/21 at
2 the Desmond Hotel. The booklet will
3 provide you with the following
4 information."

5 Do you see that?

6 A. Yes.

7 Q. And it lists items that are
8 included in the booklet that are attached
9 here. If you turn to the third page in
10 this document, you actually see that
11 there's a -- this is a 2008 Fentora World
12 Cup briefing book.

13 Do you see that?

14 A. Mm-hmm. Mm-hmm.

15 Q. And this is a document that
16 you would have received and reviewed
17 prior to this event, right?

18 A. Would have received it and,
19 yes, reviewed it. I don't know how
20 detailed I would have reviewed it. But
21 yes, I would have received it. It was
22 e-mailed to me.

23 Q. And if you turn to the next
24 page in, ending in 5030 on the Bates, you

1 see that there's -- under player
2 profiles, it states that one of the
3 player profiles is Fentora EI, or
4 expanded indication, on Page 10.

5 Do you see that?

6 A. Mm-hmm.

7 Q. And Fentora EI, expanded
8 indication is referring to Fentora for
9 patients without cancer, right?

10 A. If I go to Page 10, I would
11 assume based on what we're talking about.
12 If I go to Page 10. Yes.

13 Q. Okay. And if you can turn
14 to Page 3 of this document, with the
15 Bates number ending 5032. You actually
16 see there's a 2008 Fentora World Game
17 Internal War Games workshop, right?

18 A. Mm-hmm.

19 Q. And there's a team Fentora.

20 Do you see that?

21 A. Yes.

22 Q. You were actually on the
23 team, on the second name -- second name
24 down, right?

1 A. Yes.

2 Q. And there's a team Fentora
3 for the expanded indication, and that
4 would be the indication for Fentora in
5 patients without cancer, right?

6 A. Based on Page 10, yes.

7 Q. Okay. So apart -- and as
8 part of this meeting, this Fentora war
9 games, you would have actually looked at
10 other materials as well, looked at some
11 PowerPoints that had some market analysis
12 and you -- right?

13 A. I'm sure we would have,
14 yeah. I can't recall what they were, but
15 yes.

16 Q. Okay. We'll look at those
17 in a minute.

18 A. Okay.

19 Q. And one of the things that
20 you would have discussed is how to
21 potentially market Fentora to patients
22 without cancer if the indication were
23 received, right?

24 A. If that's a stated objective

1 in here or one of the subsequent
2 documents, then yes.

3 Q. Okay. And if you turn to
4 Page 7 of this document ending in 5036,
5 you see that the top of this document is
6 titled, "The 2000 (sic) Fentora World Cup
7 Internal War Games Workshop"?

8 Do you see that?

9 A. Yes.

10 Q. And you see in the middle of
11 the page it states that, "Currently
12 most" -- "Currently physicians' most
13 common treatment for breakthrough pain,
14 BTP, is to increase the dose of LAOs,
15 followed by increasing the dose or
16 frequency of SAOs."

17 Do you see that?

18 A. Yes.

19 Q. And LAOs means long-acting
20 opioids, right?

21 A. Yes.

22 Q. And SAOs means short-acting
23 opioids, right?

24 A. Correct.

1 Q. "While the familiarity with
2 the use of ROOs to treat BTP is growing
3 are being, the ROO market is actually
4 shrinking with moving annual total, MAT,
5 growth down an average of 16 percent in
6 2008 compared to the same months in
7 2007."

8 Do you see that?

9 A. Yes.

10 Q. So this document from year
11 2008 war games indicates that the
12 rapid-onset opioid market, which includes
13 the fentanyl product Fentora, is
14 shrinking, right?

15 A. Yes.

16 Q. And if you look down towards
17 the bottom of this page it states,
18 "Currently the lead prescribers of
19 rapid-onset opioids for breakthrough pain
20 treatment are pain specialists and
21 anesthesiologists; however, they still
22 consider rapid-onset of opioids to be a
23 final resort, last cause (sic) of action.
24 In part this is due to" -- and the first

1 bullet point is, "The limited
2 indication."

3 Do you see that?

4 A. Yes.

5 Q. And in this context, the
6 limited indication means the fact that
7 it's only indicated for treatment of
8 breakthrough pain in patients with
9 cancer, right?

10 MR. ANDRISANI: Objection.

11 THE WITNESS: I didn't write
12 the document. I don't know, I
13 mean, the limited -- that's what
14 the indication was for.

15 As I had mentioned earlier,
16 there's a lifecycle management
17 program. One of those was
18 noncancer. But there's multiple
19 of studies that go on.

20 So whoever wrote this could
21 be referring to multiple different
22 indications that may or may not
23 have been pursued.

24

1 BY MR. FAES:

2 Q. Well, you were -- you were
3 at these war games, right?

4 A. I was at them.

5 Q. And you were -- you were
6 sent and reviewed this document in
7 preparation for the war games, right?

8 MR. ANDRISANI: Objection.

9 Asked and answered.

10 THE WITNESS: Yeah. I mean,
11 I can't -- I was sent it and I
12 reviewed it, yeah.

13 BY MR. FAES:

14 Q. So what's your -- so what's
15 your interpretation of that statement
16 that, "Currently, the lead prescribers of
17 rapid-onset opioids for breakthrough pain
18 treatment are pain specialists and
19 anesthesiologists; however, they still
20 consider rapid-onset opioids to be a
21 final resort, last cause (sic) of action.
22 This is in part due to the limited
23 indication"? What is -- what is your
24 interpretation of what that means?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: Just what it
3 says. I don't have an
4 interpretation. I mean, the way
5 that I read it is that, just how
6 it reads. It's pain specialists,
7 anesthesiologists that consider
8 ROO or TIRF to be a last resort.

9 And that one of the reasons
10 is the limited indication, which
11 could be what we spoke about in
12 that lifecycle management program,
13 other indications that they're
14 pursuing or other indications that
15 doctors may have considered
16 Fentora for use.

17 BY MR. FAES:

18 Q. Right. And one of those
19 indications that was being pursued at
20 this time was an indication for treatment
21 of breakthrough pain in patients without
22 cancer, right?

23 A. Yes, as we reviewed earlier.
24 And I'm not as familiar with the

1 developmental program of Fentora.

2 Q. Okay. You can set that --

3 MR. MADDEN: Can you take a
4 five-minute break? Are you done
5 with that document?

6 MR. FAES: Sure.

7 THE VIDEOGRAPHER: Off the
8 record. The time is 3:54.

9 (Short break.)

10 THE VIDEOGRAPHER: We are
11 going back on record. Beginning
12 Media File Number 7. The time is
13 4:02.

14 BY MR. FAES:

15 Q. Mr. Day, we are back on the
16 record after a short break. Are you
17 ready to proceed?

18 A. Yes.

19 Q. Before we took a break, we
20 were talking about the Fentora war games
21 that occurred in April of 2008. Do you
22 remember that?

23 A. Yes.

24 Q. And we talked about as part

1 of that event there would have been, you
2 know, materials and PowerPoints that were
3 distributed and looked at by the more
4 than 30 people that attended that event,
5 right?

6 A. Yes.

7 Q. And I'm going to hand you
8 what I've marked as Exhibit 41 and 42.
9 And 41 is just an e-mail attaching
10 Exhibit Number 42, which is one of the
11 materials that was apparently distributed
12 at this event.

13 (Document marked for
14 identification as Exhibit
15 Teva-Day-41.)

16 (Document marked for
17 identification as Exhibit
18 Teva-Day-42.)

19 BY MR. FAES:

20 Q. So if you could look at
21 Exhibit Number 42. You can see that's
22 titled Fentora brand audit/market --
23 market pulse.

24 Do you see that?

1 A. Yes.

2 Q. And do you recognize this as
3 one of the PowerPoints that was
4 distributed and discussed at this
5 meeting?

6 A. I don't recall receiving
7 this or discussing it. It may have been
8 discussed at the meeting. I just can't
9 recall the specific --

10 Q. Okay. Well, let's take a
11 look through it --

12 A. -- PowerPoint.

13 Q. -- and see if any of it
14 refreshes your memory.

15 It appears to be a market
16 survey of -- of doctors that prescribe
17 Fentora. And if you turn to the ninth
18 page in.

19 A. Okay.

20 Q. And you see, this appears to
21 be --

22 A. I'm sorry, can I just look
23 at this?

24 Q. Sure. Take as long as you

1 need.

2 A. Is there anything else back
3 here? No.

4 Q. Yeah, those -- those
5 documents on the back are just
6 placeholders --

7 A. Okay.

8 Q. -- for the PowerPoints that
9 were -- that were attached.

10 A. Okay, okay, okay. Yep.

11 This slide.

12 Q. If you're looking at the
13 eighth page in of Exhibit 42, it looks
14 like there is a claims overview and a
15 rank order. Do you see that?

16 A. Yes.

17 Q. And the first rank is
18 expanded labeling. Do you see that?

19 A. Yes.

20 Q. And you see over on the left
21 it says expanded labeling,
22 permission/justification, and smoother
23 approval process.

24 Do you see that?

1 A. Yes.

2 Q. At this meeting, did you
3 discuss potential enhancements to the
4 Fentora marketing program and determine
5 that an expanded labeling would be the
6 number one thing that you could get to
7 help you improve the marketing of -- of
8 Fentora?

9 MR. ANDRISANI: Objection.

10 THE WITNESS: I don't recall
11 that discussion.

12 BY MR. FAES:

13 Q. Okay. If you turn to the
14 following page, do you see where it
15 states, "Physicians agree that an
16 expanded labeling would provide
17 validation of current physician
18 prescribing behavior, would ease the
19 approval process, and would increase
20 confidence among dabblers and
21 nonwriters."

22 Do you see that?

23 A. I do.

24 Q. Is that something that was

1 discussed at this Fentora world cup
2 meeting?

3 MR. ANDRISANI: Objection.

4 THE WITNESS: I -- I don't
5 know where this document was
6 created or presented or who -- I
7 don't know the context behind it,
8 I guess. It's here. It's
9 written. I don't know if it was
10 discussed. I can't recall
11 discussing confidence amongst
12 dabblers.

13 BY MR. FAES:

14 Q. Did you ever at any Fentora
15 meeting discuss that an expanded
16 indication, meaning an indication for
17 Fentora for noncancer patients would
18 provide validation of current physician
19 prescribing behavior?

20 MR. ANDRISANI: Objection.

21 THE WITNESS: No.

22 (Document marked for
23 identification as Exhibit
24 Teva-Day-43.)

1 BY MR. FAES:

2 Q. Mr. Day, I'm going to hand
3 you what's been marked as Exhibit 43 to
4 your deposition.

5 A. Okay.

6 MR. ANDRISANI: Thank you.

7 BY MR. FAES:

8 Q. And this is a PowerPoint
9 dated September 5th of 2008. And it's
10 titled Fentora forecast assumptions based
11 on conjoint. Do you see that?

12 A. Yes. And assumptions and
13 conjoint is usually analysis done by
14 market research. I was in the sales
15 training role.

16 Q. Okay. But if you -- if you
17 turn to the third page in of this, and it
18 says, "Why was this conjoint conducted."
19 And it's to -- it looks like the purpose
20 of this conjoint summarized in this
21 PowerPoint is to "quantify Fentora impact
22 of expanded indication beyond
23 breakthrough patients" -- "beyond
24 breakthrough pain in patients with

1 cancer."

2 Do you see that?

3 A. I do.

4 Q. And if you turn to the 13th
5 page in, the slide labeled, "High Impact
6 Events."

7 A. Okay.

8 Q. Do you see there on the
9 second bar from the bottom, it states,
10 "Expanded indication with a launch date
11 of October 2010"?

12 Do you see that?

13 A. Yes.

14 Q. And it looks like the
15 projected impact to sales going through
16 2015 of an expanded indication is
17 \$70 million in sales.

18 Do you see that?

19 A. Yes.

20 Q. Did you have an
21 understanding at any time when you were
22 either the Fentora product manager or the
23 sales trainer or the manager of the
24 Mid-Atlantic region that getting an

1 expanded indication for Fentora would
2 have a significant impact, increasing the
3 sales of Fentora?

4 A. No.

5 Q. Was this data ever shared
6 with you?

7 A. No.

8 MR. FAES: Okay. I think
9 that's all the questions I have
10 for you right now, Mr. Day. Thank
11 you for your time.

12 THE WITNESS: Thank you.

13 THE VIDEOGRAPHER: Going off
14 record. The time is 4:09.

15 (Brief pause.)

16 THE VIDEOGRAPHER: We are
17 back on the record. Beginning of
18 Media File Number 8. The time is
19 4:10.

20 - - -

21 EXAMINATION

22 - - -

23 BY MR. GASTEL:

24 Q. Mr. Day, I represent a group

1 of plaintiffs in the Tennessee lawsuit
2 pending currently in Tennessee state
3 court. So it's a different group of
4 plaintiffs than the lawyers that were
5 asking you questions throughout the day.

6 MR. GASTEL: I first want to
7 state for the record my usual
8 objection that on behalf of my
9 clients, due to our belief that
10 Teva has failed to continue to
11 meet its obligations under the
12 state and federal cooperation
13 protocol, we object to the
14 deposition going forward today.
15 And we've laid out the reasons for
16 that in the previous depositions
17 and motions to quash.

18 MR. ANDRISANI: Understood.

19 BY MR. GASTEL:

20 Q. With that objection, I just
21 have a couple of questions and hopefully
22 we're going to get out of here really
23 quick.

24 A. Sounds good.

1 Q. How many times in your work
2 for Teva did you travel to the state of
3 Tennessee, if at all?

4 A. Never.

5 Q. Do you have an idea of
6 prescription opioid -- prescription
7 opioid prescribing rates in the state of
8 Tennessee?

9 A. I do not.

10 Q. Do you have any idea of the
11 rates of prescriptions for Fentora in
12 Tennessee from 2015 to the present?

13 A. I do not.

14 Q. Do you have any idea of the
15 rates of prescriptions for Actiq in
16 Tennessee from 2015 to the present?

17 A. I do not.

18 Q. You were in charge for a
19 brief period of time of the Mid-Atlantic
20 region as the regional sales manager,
21 right?

22 A. Yes.

23 Q. We saw earlier that that did
24 not include the state of Tennessee,

1 right?

2 A. Correct.

3 Q. Do you know who was in your
4 role from the area that covered Tennessee
5 or parts of Tennessee?

6 A. I can't recall. I don't
7 know. There should be a sales roster. I
8 don't know where Tennessee -- this is
9 embarrassing. But I don't know -- I've
10 never been to Tennessee. I'm not sure if
11 it falls in the upper on -- I mean, I
12 know where it is on the map.

13 Q. Sure.

14 A. But in terms of our
15 geographical cuts, I'm not sure if it
16 would have been somebody in the more
17 Northern section of the middle of the
18 country or the southern.

19 Q. Okay.

20 A. So --

21 Q. That's all right.

22 A. And managers change pretty
23 frequently.

24 Q. Sure. Again, I don't want

1 to belabor too much and I don't want to
2 go -- I don't want to redo anything that
3 was done earlier this morning. But we
4 did see a slide earlier that you were
5 presented with that stated that there
6 were 12 million people abusing or
7 misusing opioids in 2010. Do you recall
8 that document? It came from Teva's Pain
9 Matters website.

10 A. Yes.

11 Q. And those numbers on that
12 website that you saw were related to the
13 year of 2010. You remember that document
14 and those numbers, right?

15 A. Yes.

16 Q. So the problem that was
17 outlined there, it didn't go away in
18 2010. You would agree with me, right?

19 A. Yes.

20 Q. That the problem of millions
21 of people abusing or misusing opioids
22 continues to this very day, right?

23 A. Yes.

24 Q. And that happens throughout

1 the country, right?

2 A. Yes, it does.

3 Q. And it would happen by
4 definition in the state of Tennessee too,
5 right?

6 A. Yes.

7 Q. And you testified earlier
8 that -- and again, I don't want to
9 belabor the points --

10 A. Yep.

11 Q. -- but earlier you provided
12 a lot of testimony about conferences that
13 you oversaw, marketing materials that you
14 drafted or reviewed, the documentary that
15 you went over all with Mr. Madden.

16 Those materials were
17 available for people throughout the
18 country, right?

19 A. Yes, they were.

20 Q. They were -- and that
21 includes doctors and patients in the
22 state of Tennessee, right?

23 A. We did not promote --
24 materials weren't available to patients

1 via us. There would be a patient
2 brochure, but it would have to come from
3 the doctor to the patient.

4 Q. Sure. And what I mean is
5 your website, there's not -- you're not
6 designing your website so that people
7 from Tennessee can't see it. It's a
8 website, anybody can see it, including in
9 the state of Tennessee?

10 A. That's correct, yes.

11 Q. And patients can access
12 that, correct?

13 A. Yes, correct.

14 Q. You referenced earlier today
15 a little bit today about your use of IMS
16 Health data?

17 A. Yes.

18 Q. What is IMS Health data?

19 A. I don't know what IMS stands
20 for. I should. But it is basically
21 prescription level data that is available
22 to the pharmaceutical industry. So it
23 shows a prescriber or a doctor and their
24 prescription, what they prescribe.

1 Q. Sure. And you used that in
2 your work with Teva, correct?

3 A. Yes.

4 Q. And you found that data
5 reasonably reliable, correct?

6 A. Yes.

7 Q. And Teva had that
8 information in its possession and custody
9 and control from 2015 to present,
10 correct?

11 A. Yes.

12 Q. MR. GASTEL: Subject to my
13 previous objection, that's all the
14 questions that I have for you.

15 MR. ANDRISANI: I'll only
16 take about two minutes of your
17 time if that's all right.

18 MR. GASTEL: You want to get
19 the mic?

20 MR. ANDRISANI: It will be
21 two minutes.

22 - - -

23 EXAMINATION

24 - - -

1 BY MR. ANDRISANI:

2 Q. Matt, I'm going to refer you
3 back to a document that you were shown
4 earlier in the day that was marked as
5 Exhibit 13. It was an oncology team
6 meeting, and they sent to you. It sounds
7 like you received a Fentora learning
8 system, pre-module introduction to pain.
9 Do you remember talking about that
10 document?

11 A. Yes.

12 Q. And I think counsel referred
13 you to Page 45 and asked you if you saw
14 different sentences in the document
15 talking about how healthcare
16 professionals have expressed concerns and
17 fears and different things?

18 A. Yes.

19 Q. At the end of those
20 sentences, there's a citation that says,
21 "APA, 2005, 2."

22 Do you know what that is?

23 A. No.

24 Q. Do you know what types of

1 cites these would be?

2 A. These would be -- the APA
3 2005, these would be references in the
4 back that were used to get the
5 information.

6 Q. Okay. Are they scientific
7 studies or medical journal articles?

8 A. Combination of.

9 Q. Okay. And when documents
10 like these were put together, were they
11 your words or were you taking from the
12 scientists and the doctors who did the
13 studies?

14 A. The scientists and the
15 doctors.

16 Q. Okay. What does Fentora
17 treat? What is it used for?

18 A. Breakthrough cancer pain in
19 opioid-tolerant patients.

20 Q. And what types of patients
21 have that symptom?

22 A. Yeah, I mean, the types of
23 patients that we were working with were
24 usually Stage III, Stage IV, highly

1 advanced cancer patients, those that had,
2 like, head, neck, bone, and lung cancers,
3 that were more advanced and more painful.

4 Q. And what would Fentora do
5 for them?

6 A. Fentora would essentially
7 relieve their breakthrough pain episodes.

8 Q. In your life, do you know
9 anybody that had to take Fentora for
10 those types of symptoms?

11 A. Yeah. Well, I've personally
12 experienced cancer loss, and the pain
13 through lung cancer and pancreatic
14 cancer. Pancreatic cancer, seen a
15 neighbor go through it, in particular,
16 and the amount of hardship that it places
17 on not only the patient, but the family
18 and the caregiver.

19 Q. Also earlier today, we spoke
20 briefly -- counsel asked you briefly
21 about the Cephalon CIA and was talking to
22 you at the time you were working on
23 developing potential materials that could
24 be used for promotion if Fentora's label

1 was expanded. Do you recall that?

2 A. Yes.

3 Q. Were any of those
4 promotional materials ever used for the
5 product?

6 A. No, they were not.

7 Q. Why not?

8 A. Because it was always
9 indicated for the management of
10 breakthrough pain in opioid-tolerant
11 patients with cancer.

12 Q. So that was just done --
13 that exercise was just done for planning
14 in the event that the indication was
15 expanded?

16 A. Correct.

17 MR. ANDRISANI: I think
18 that's all I have.

19 - - -
20 EXAMINATION

21 - - -
22 BY MR. MADDEN:

23 Q. Briefly following up on
24 that. Exhibit 14 was the module that was

1 used for sales training with regard to
2 introduction to pain on Fentora, correct?

3 A. Correct.

4 Q. And you and I sparred a
5 little bit on part of that module, which
6 at Page 49, for example, said, "Patients
7 in pain do not usually become addicted to
8 opioids."

9 Do you recall that?

10 A. Yes.

11 Q. Do you recall you and I
12 talking about that?

13 A. Yes.

14 Q. You're familiar, I take it,
15 with the Fentora label?

16 A. Yes.

17 Q. Addiction, is it listed as a
18 risk or side effect in the Fentora label?

19 A. Yes.

20 Q. So the statement in the
21 training module which says, "Patients in
22 pain do not usually become addicted to
23 opioids," is contrary to the label, isn't
24 it?

1 MR. ANDRISANI: Objection.

2 THE WITNESS: Patients can
3 become addicted and patient -- not
4 all patients become addicted. So
5 it's -- I don't know if it
6 contradicts it. It depends upon
7 the patient.

8 BY MR. MADDEN:

9 Q. I understand that. But you
10 would agree with me that the label warns
11 about addiction as a risk or side effect
12 of Fentora use, right?

13 A. Absolutely, absolutely.

14 Q. If the module has
15 information in it, the training module
16 has some information in it that patients
17 in pain are different in that they do not
18 become addicted to opioids, that would be
19 contrary to the Fentora label, wouldn't
20 it?

21 MR. ANDRISANI: Objection.

22 Misstates the document.

23 THE WITNESS: I don't
24 interpret it that way. Patients

1 in pain may or may not become
2 addicted. If -- if you're in pain
3 and you're treated with an opioid,
4 you could become addicted. But
5 there are also patients that are
6 treated with opioids that are not
7 addicted.

8 BY MR. MADDEN:

9 Q. Fair enough. But the
10 statement that's in the module that says,
11 "Patients in pain do not usually become
12 addicted to opioids," is contrary to what
13 you just told me, right?

14 MR. ANDRISANI: Objection.

15 THE WITNESS: I don't know
16 what's meant by "usually become
17 addicted."

18 BY MR. MADDEN:

19 Q. Let me ask you this. Let's
20 go about it another way. What about
21 being in pain would make a patient less
22 likely to become addicted?

23 MR. ANDRISANI: Objection.

24 BY MR. MADDEN:

1 Q. To an opioid.

2 A. What about being in pain.

3 Q. What would be the medical
4 reason that somebody who is in pain would
5 be less likely to become addicted to an
6 opioid?

7 MR. ANDRISANI: Objection.

8 THE WITNESS: It's
9 multifactorial. I don't know if
10 it's just a medical reason or a --
11 I don't know. It -- I feel like
12 I'm getting into like a doctor
13 space.

14 BY MR. MADDEN:

15 Q. So your answer is you don't
16 know, right?

17 A. I don't know.

18 MR. MADDEN: Okay. Fair
19 enough. That's all I have.

20 MR. ANDRISANI: I have
21 nothing further.

22 THE VIDEOGRAPHER: That
23 concludes today's deposition.

24 Going off the record. The time is

1 4 :22 .
2 (Excused.)
3 (Deposition concluded at
4 approximately 4:22 p.m.)
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2 CERTIFICATE

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4

5

I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness.

6

7 It was requested before completion of the deposition that the witness, MATTHEW DAY, have the opportunity to read and sign the deposition transcript.

8

9

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12

MICHELLE L. GRAY,
A Registered Professional Reporter, Certified Shorthand Reporter, Certified Realtime Reporter and Notary Public

13

Dated: January 9, 2019

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(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

1

INSTRUCTIONS TO WITNESS

2

3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8

 After doing so, please sign
9 the errata sheet and date it.

10

 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.

14

 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.

21

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E R R A T A
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4 PAGE LINE CHANGE

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6 REASON : _____

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24 REASON : _____

1

2 ACKNOWLEDGMENT OF DEPONENT

3

4 I, _____, do
5 hereby certify that I have read the
6 foregoing pages, 1 - 377, and that the
7 same is a correct transcription of the
8 answers given by me to the questions
9 therein propounded, except for the
10 corrections or changes in form or
11 substance, if any, noted in the attached
12 Errata Sheet.

13

14

15

16 MATTHEW DAY

DATE

17

18

19 Subscribed and sworn
to before me this

20 _____ day of _____, 20 _____.
21 My commission expires: _____

22

23 Notary Public

24

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LAWYER'S NOTES

2 PAGE LINE

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